XIII

REPORTS

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

From 1861-62 to 1865-66.

Allahabad:

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1866.

REPORTS

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

From 1861-62 to 1865-66.

No. 386 OF 1864.

FROM

G. H. M. BATTEN, ESQUIRE,

Secretary to the Board of Revenue,
North-Western Provinces,

To

R. SIMSON, ESQUIRE,

Secretary to Government, North-Western Provinces.

DATED ALLAHABAD, THE 11TH JUNE, 1864.

REVENUE.

Present:
W. MUIR, ESQ., *Senior Member;*
and
R. MONEY, ESQ., *Junior Member,*

SIR,

IN reply to Government Orders No. 206A., date 23rd August, 1862, giving cover to Proceedings of the Right Hon'ble the Governor-General in Council No. 4046, dated 7th August, 1862, with an enclosure from the Secretary of State for India, I am desired by the Board of Revenue to furnish the accompanying statement and remarks, showing the results of the litigation to which Government was a party during the years 1861-62 and 1862-63.

2. In Bengal these reports are prepared annually by an Officer—the Legal Remembrancer—whose sole duty it is to superintend the conduct of those cases in which Government is concerned. But the Government of India having declined to sanction such an appointment for these Provinces, the functions of Legal Remembrancer in the North-Western Provinces are exercised by the Board, under Act. XIII. of 1829.

3. The mode in which the action of the subordinate Revenue Authorities is controlled by the Board in the exercise of these functions was first systematized in 1848, in accordance with the suggestions of the then Lieutenant-Governor, and the minutes of the then Members of the Board.

4. The system then introduced, modified by the Board's Circular CC. of 1854,* now regulates the procedure of the Commissioners and Collectors.

* "Directions to Collectors," page 415 *et seq.*

5. To furnish, however, full and copious annual reports to Government, the Board require more information than it now possesses; and it is proposed, with the sanction of Government, to issue new Rules with a view to secure this object.

6. I am desired also to suggest that general instructions be given to all the administrative and executive departments, with a view to their consulting the Board, through the Collector, when sued or instituting suits on behalf of Government. It

sometimes happens that suits in which Government is a party are brought by or against departments such as the Public Works. These are not reported; and thus, though charged, as Legal Remembrancers, with the supervision of all cases in which Government is interested, the Board are not always in a position to exercise the necessary control.

For instance, several suits were lately brought by contractors under the Public Works Department against the Government, as represented by the Officers of that Department in the Meerut District. The first intimation received by the Board in these cases was by petitions from the Government Pleader of the Sudder Court, requesting instructions to defend appeals which had been filed in that Court.

7. Subjoined is a statement, in a tabular form, giving the results of the litigation in the years 1861-62, 1862-63, in which Government has been a party, so far as known to the Board.

8. It will be seen that as many as 353 cases have been litigated during those two years. To master the details of these cases, it has been necessary to go through carefully almost as many series of correspondence. This has been a work of some time and labor.

	Government, Plaintiff or Appellant.						*Government, Defendant or Respondent.*					
	Number of cases pending.	Decided for Government.	Decided against Government.	Total number decided.	Percentage for Government.	Percentage against Government.	Number of cases pending.	Decided for Government.	Decided against Government.	Total number decided.	Percentage for Government.	Percentage against Government.
1861-62.												
Original suits, ...	44	32	3	35	91·4	8·6	89	44	15	59	74·6	25·4
Appeals, ...	4	3	0	3	100·	0	17	9	2	11	81·8	18·2
Applications, ...	8	7	1	8	87·5	12·5	16	10	4	14	71·4	28·6
1862-63.												
Original suits, ...	7	13	...	13	100·	...	105	44	24	68	64·7	35·3
Appeals, ...	9	1	3	4	25·	75·	39	21	4	25	84	16·
Applications, ...	3	1	...	1	100·	...	2	2	...	2	100·	...

9. It will be seen, then, that in the two years under report 353 suits were pending in which Government was either a plaintiff or a defendant. Of these, 243 were decided,—187 for Government, and 56 against Government; 22 cases were compromised out of Court.

10. The result of the litigation as reported is very favorable to Government,—76·9 per cent. of the cases having been decided in favor of Government, as compared with 23·1 per cent. against it.

11. The amount of litigation in these two years must be considered exceptional. In normal years the number of suits to which Government is a party would probably be very much less than the total shown in this report: no less than 192 of these cases, instituted in these two years, have had their causes of action in the events of 1857, and consequent confiscations. In the whole of these cases (192) Government either sued, or was sued as the representative of the rights and liabilities of, rebels whose estates had been confiscated.

12. The number of this description of cases has also been somewhat unnecessarily increased, owing to an erroneous impression prevalent among many Collectors that the Special Commission Act (No. IX. of 1859) had introduced a new term of limitation affecting mortgagors of properties, the mortgagees of which were rebels, and whose property had been forfeited under the Special Confiscation Acts.

13. Of the 22 cases compromised, the larger portion were suits by mortgagors of such properties to exercise their equity of redemption; and, had the law been rightly understood, these suits would never have been instituted.

14. Section 20 of the Act, on which Collectors relied in these cases, is quoted in the margin. But as in these cases the position of the mortgagors was not affected by the attachment or seizure of the mortgaged property in the possession of the rebel mortgagees, no cause of action arose from which the period of limitation could be counted. Under the law as it then stood (Regulation II. of 1805, Section 3, Clause 4), time did not run against a mortgagor so as to bar redemption; and it cannot be supposed that, by Section 20 of Act IX. of 1859, the Legislature intended to force all mortgagors of property attached as forfeited, on account of the rebellion of the mortgagees, to redeem within one year of the date of attachment, on pain of losing their rights of redemption altogether.

XX.—"Nothing in this Act shall be "held to affect the rights of parties "not charged with any offence for which, "upon conviction, the property of the "offender is forfeited, in respect of any "property attached or seized as forfeited or liable to be forfeited to Government, provided that no suit brought "by any party in respect of such property shall be entertained unless it be "instituted within the period of one "year from the date of the attachment "or seizure of the property to which the "suit relates.

15. In 1858, the opinion of Mr. Advocate-General Ritchie was taken by the Governor-General as to the position of Government in confiscated estates. That opinion, as elaborately expressed in a paper bearing date the 28th August, 1858, forwarded to the Board under Government Orders in the Revenue Department No. 4083, dated 4th October, 1858, has guided them in the conduct of suits in which Government represented by confiscation the rights and liabilities of rebels. It was to the effect that Government was "much in the same position as a purchaser who has given a fair consideration for an estate, and who cannot be held liable to the claims of the unsecured creditors of the vendors, although their claims may have existed long before the purchase, and although they may have looked to the estate as their ultimate means of payment;" and that Government did "not take upon itself burthens which are purely personal to the owner, and which form no charge upon any portion of his property." It was on this ground that the case noted below, in which Benee Pershaud had sued Government for the value of property plundered by rebels whose estates had been confiscated, was inadmissible. In another suit,* brought after the period of limitation had expired, in which the plaintiff sued, as mortgagees of confiscated property, to enforce their lien, the Board agreed under special circumstances to waive the limitation plea and to defend the suit on its merits, as there was little doubt that the mortgage transaction was invalid. The plaintiffs, however, withdrew their suit, seeing that it was hopeless.

* Lalas Sheonarain and Oodey Ram *versus* Government

16. It remains only to note the particular suits which call for remarks.

17. This was an action to recover damages for the diversion of water from the plaintiff's lands. It appears that the plaintiff had land on either side of the Railway embankment; on one side was a jheel, or swamp, from which, previous to the construction of the line, the whole of plaintiff's land on either side of it had been irrigated.

No. 1.—Moonshee Bance Lall *versus* E. I. Railway Co., and Government.

18. In consequence of the Railway Company having built an embankment for their line, the water of this jheel could no longer obtain access to the land on the other side, and the land remained unirrigated. By this diversion of the water, plaintiff claimed to be endamaged, and he laid his suit against the Railway Company and Government to recover Rs. 903-4-7 on this account. The plaintiff impleaded the Government on the somewhat curious allegation that "the Railway Company had been assisted in the construction of the line by Government." The Court of first instance dismissed plaintiff's claim against the Government, but at the same time cast Govern-

ment in its own costs, on the ground "that plaintiff's loss and damages had arisen (if it had arisen*) owing to the informal proceedings of the Deputy Collector who had taken up the petition of the plaintiff calling for redress."

* *Sic.*

19. Against this decision the Government appealed successfully, being exempted from costs.

20. The case is remarkable for the doctrine advanced by the Court of first instance,—that the fact of the Deputy Collector having listened to plaintiff's petition in the Revenue Department made Government liable for costs incurred in a judicial suit in which the Court found, at the same time, that the Government should not have been impleaded.

21. The case is also noticeable as having elicited from the Railway Company the opinion that in such circumstances the Government was liable for damages, on the ground that this was a severance charge, which, as the Government was bound by contract to provide the land for the Railway, was payable by Government as a part of the cost of the land. On the other hand, it was urged on behalf of Government, in accordance with the opinion* of the Officiating Advocate-General, that, though the Government had provided the land necessary for the Railway, when once that land was placed in the Railway Company's possession the Company alone was answerable for the acts of its servants; that the Company was bound by the principle "*sic utere two ut alienum non lædas*;" that the Company was bound to uphold the existing interests of the neighbouring proprietors where they might have a right of way or water and the like; that they were not entitled to interfere with an easement such as that of the plaintiff in this suit; and that, as the Railway Company were bound to make at their own expense culverts to maintain the drainage, so they were bound to pay damages which might ensue from their failure to make such culverts.

* *Vide* G. O. No. 96N., dated 18th July, 1863, in Public Works Department, Railway Branch.

22. This contention on the part of Government was allowed by the Court.

It is understood, however, that the Railway Company are about to appeal this decision.

23. This case is remarkable as illustrating the practice of the Courts in the case of (*ismfurzee*) nominal proprietors of estates.

No 2.—Azaudoollah *versus* Government and Mukdoom Buksh.

24. It appears that one Mukdoom Buksh was entered in the Revenue Registers as mortgagee of a certain estate. In the mortgage bond he was also represented as the mortgagee.

25. Mukdoom Buksh became a rebel. His property, and with it the mortgage lien on this estate, was confiscated.

26. The plaintiff on this suit then appealed. He claimed that he had really advanced the money on this mortgage, though he acknowledged that he had, for his own convenience, entered the name of Mukdoom Buksh as mortgagee in the deed of mortgage.

27. On this, it was urged for the Government that this was an estoppel against the plaintiff; that plaintiff admitting he had executed this deed, was estopped by it from pleading a fact directly contrary to that recited in the deed.

28. The Court held, according to precedents quoted, that transactions such as that alleged by the plaintiff were recognized by the law; "that the practice of individuals purchasing estates for their own benefit, though registering them in the names

of their relatives, is by no means uncommon, and its legality has been recognised repeatedly by the Courts; and that the nominal proprietor has no title against the real proprietor."

29. In Section 260 of the present Civil Code (Act VIII. of 1859) will be found the first step towards the amendment of this practice of our Courts,—a practice which has tended very much to encourage fraudulent transactions and fraudulent deeds.

30. This section enacts that "any suit brought against a certified purchaser (of an estate sold by order of the Civil Court) on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs." This, with the Registration Law (Act XVI. of 1864), will put an effectual stop to *benamee* transactions. A report on this case was submitted to Government by the Board in their address No. 367, dated 3rd June, 1863.

No. 3.—Goshaeen Sham Soondur Doss *versus* Government.

31. The property involved in this suit was small in amount, but the case is worthy of notice. Plaintiff claimed Rs. 4-7-0, being the value of certain property attached by the Magistrate of Muthra as an escheat to Government *(ex delicto sanguinis)*.

32. The facts are these:— A traveller died intestate and without apparent heirs. The property of the deceased was attached by the Government officials as an escheat.

33. The plaintiff, who was manager of one of the neighbouring shrines, claimed this property, on the ground that deceased was a pilgrim, and that by ancient custom the property of a pilgrim, in case of his death on his pilgrimage, went to the shrine he was bound for.

34. This claim was dismissed, on the ground that deceased was a traveller, and not a pilgrim. The Court, however, on deciding the case, ruled that, *had deceased been a pilgrim*, plaintiff's case would have held.

35. Against this the Government appealed; but the Appellate Court upheld the decision in its entirety. A second appeal lay to the Sudder Adawlut; but the case was not proceeded with further on the part of Government, as the original ruling objected to was not a decision, but surplusage, and an *obiter dictum*, having been uttered with reference to a matter not in issue before the Court, because the decision on the first issue excluded this point from consideration. Hence this dictum would not of necessity be binding in any future case. Should the point, however, come up in any future case, where the claim was of any value, the Board would not be prepared to allow this dictum to pass unchallenged.

36. The principle that the manager of a shrine is entitled to the property of any pilgrim who may die intestate on his pilgrimage is not sanctioned by the Hindoo Law. The Board are not aware of any religious rule or custom which could override the law regarding escheat of this nature,—for a custom, to be valid, must be both reasonable and certain. Such a custom as that alleged here is neither the one nor the other; specially, it cannot be said to be certain—for it is not possible to ascertain which one of many shrines is entitled to the property of a pilgrim who is bound to several temples. The custom is also unreasonable, because there is no fixed limit within which it must be exercised;—for instance, a pilgrim might die at Rajpore, on his way to Buddrinath: It would be unreasonable that the Buddrinath priests should claim at such a distance on local custom as opposed to law.

Case No. 4.—Juwalla Pershad and another *versus* the Rana of Dholepore.

Claim, Rs. 10,695-10-3, on account of goods delivered.

37. In accordance with the orders of Government in the Judicial Department No. 3010A., dated 28th November, 1860, this case was defended for the Rana of Dholepore—an independent Chieftain—by the Government. It is noticeable, as it establishes a precedent as to the amenability of independent Indian Princes to the jurisdiction of the Civil Courts on account of debts contracted within British territory.

38. The case is reported *in extenso* in the Sudder Dewanny Adawlut Reports for 1863, having been brought before a full Bench. It was ruled that independent Native Chiefs in treaty with the British Government were not amenable to the jurisdiction of the Civil Courts, though not specially exempted by the Civil Procedure Code.

39. But, although not liable to personal actions, it would seem right that, if independent Chiefs have lands within the jurisdiction of our Courts, and those lands have been made subject to a charge, such charge should be enforced (*vide* "Macpherson's New Civil Procedure," page 16). The Sudder Court's decision, dated 20th June, 1863, in this case was forwarded to Government under my docket No. 533, dated 4th August, 1863.

40. This case is remarkable more from the nature of the claim made against Government than for any other reason.

No. 5.—Banee Pershad *versus* Government and others.

41. It appears that plaintiff sued to recover Rs. 98,000, the value of property plundered from him in the disturbances.

42. Rs. 43,000 of this he claimed to recover from Government, on the ground that his property was plundered by certain rebels whose estates the Government had confiscated, and that these estates had realized Rs. 43,000.

43. The claim was dismissed both in the Court of first instance and in appeal.

No. 6.—Zuhoor-ood-deen *versus* Government.

44. This is an important case: it is still under litigation.

45. The case is put in the form of a suit to set aside the orders of a Settlement Officer; in reality it is a claim to an estate of 10,900 acres of land, to be held on payment of a perpetual rent to Government of Rs. 1,877-8-0.

46. The claimants are the descendants of a Pindara Chieftain whom the British Government had settled in their territories with a grant of certain yearly allowance, in lieu of which allowance the estate of Guneshpore, in the Goruckpore District, was afterwards given to him rent-free, and to his heirs, conditional on their paying a certain fixed rental.

47. In the original title-deeds this estate is shewn to have an area of 3,933 beegahs, or about 2,500 acres of land; and was estimated, when fully cultivated, to yield an annual income of Rs. 3,755, of which half was to be paid to Government as Revenue.

48. The plaintiff now claims 8,289 acres of land in addition, as appertaining to this estate. He states that Government bestowed on his ancestor the whole estate of Guneshpore, including certain manorial rights of wood and water (*bunkur* and *julkur*); that this estate was to be held, by the terms of the title-deed, by the grantee and his heirs in perpetuity, on the payment of adequate revenue; that in 1822 this adequate revenue was fixed, and that the whole estate thus leased in perpetuity to the heirs of the Pindarah Chief amounted to 10,582 acres; that the Settlement Officer who is re-settling the district in which this estate was situate has proposed to separate and assess separately 8,289 acres of this estate—that being the area found on measurement to be in excess of the estate held under the title-deeds, *viz.*, 3,933 beegahs. Plaintiff therefore instituted his claim to restrain the Settlement Officer from carrying out this intention.

49. Plaintiff grounds his claim to an estate so largely in excess of that conveyed under the title-deed on the fact that, in estimating the rental *assets* of this estate at the time of fixing the Government demand, an item of Rs. 500 is entered as *julkur* and *bunkur*.

50. He argues that this Rs. 500 represented the forest dues of a large tract of forest not measured and specified in the title-deeds, but comprised in the Guneshpore estate, which was assigned to his father and his father's heirs; that, as entitled to the

forest rights, he is equally entitled to any rent he may collect from their land when disforested and turned into cultivation.

51. This argument is not acceded to by the Government, on whose part it is urged that plaintiff is entitled only to so much estate as is specified in the title-deeds; that the mere fact of plaintiff's father, in his specification of the rental of the estate, having entered an item of Rs. 500 as manorial dues, does not convey to him or his heirs any title to property outside the limits of the estate specified in the title-deed, *viz.*, 3,933 beegahs. Even supposing it were capable of proof that the *julkur* and *bunkur* profits were derived from the neighbouring forests not included in the 3,933 beegahs, it is contended on the part of Government that the fact could not have given the grantees a claim to the reclamation of forest lands *ad libitum*, and to the inclusion of such reclaimed lands within the limits of the 3,933 beegahs: it could only have given a claim to a revision of the assessment in the grant, with the view of excluding the Rs. 500 from the computation. But, as above shewn, the Government did not admit this concession, holding that the *julkur* and *bunkur* profits referred to such profits from lands within the grant. When the settlement of the Goruckpore District was made, in 1838, the renewal of the fixed assessment of Rs. 1,877-8-0 was made *pro forma*, although the actual area in possession of the grantees was ascertained. It does not appear to have struck the Settlement Officer at that time that this area was so vastly in excess of that entered in the title-deeds. Moreover, the Settlement of 1838 has now expired, and it is open to Government, under Clause 3, Section 6, Regulation VII., 1822, to correct the "material error" which occurred in 1838, by which the excess land was included in the mehal held under the title-deeds of the proprietors, subject to a fixed Revenue demand of Rs. 1,877-8-0.

52. Government have admitted the Pindaras to engage as proprietors for all the land in their occupancy, though, of course, on the principles above laid down, the ordinary Revenue has been assessed on all the land so occupied beyond the limits of the original grant.

53. Plantiff's claim has been dismissed in the Court of first instance, but he has appealed to the Sudder Court. When his case in appeal is decided, it will be fully noticed in the Board's Yearly Report.

54. The only other case calling for comment is that now to be noticed, which is the leading case with regard to the period of limitation as to claims to estates confiscated under the special laws of 1857-58.

No. 7.—Sheo Sahoy, appellant, *versus* Rajah Bhowanee Singh, and Government, respondents.

55. This case has been reported *in extenso* in the "Selected Reports of the Sudder Dewanny Adawlut," page 745 of the volume for September, 1861. The history of the case is as follows:—

56. The property of Tej Sing, Rajah of Mynpoory, was confiscated for rebellion, and the proclamation of confiscation was issued on the 3rd December, 1857. The confiscation was confirmed on the 29th January, 1858. On the 3rd March of that year the estate in question was given, as a reward for his loyalty, to Rajah Bhowanee Sing, defendant No. 1.

57. Sheo Sahoy claimed to have a lien on the estate for Rs. 19,000. On the 30th April, 1859, Act IX. of 1859 was passed, under which Special Commissioners for the adjudication of all claims to confiscated estates were appointed, and the powers of the ordinary Civil Courts in such cases were suspended. Both by Act XXV. of 1857 and Act IX. of 1859, suits with regard to confiscated property must be brought within a year from the date of the seizure of such property.

58. On the 17th October, 1859, the plaintiff sued Rajah Bhowanee Sing and Government before the Special Commission Court. On the 24th November, 1859, two members of that Commission referred the plaintiff to the Civil Court, holding that the

fact of the property having been granted after confiscation to a third party took the case out of their cognizance.

59. This decision was manifestly quite incorrect, as the fact of Government having given away the property to a third party did not take the property out of the category of "property seized as forfeited," to which the Act referred; but, as the decision was passed by only two members of the Court, it was invalid as a final order under Section 2 of the Act.

60. The plaintiff then sued both Rajah Bhowanee Sing and Government in the Civil Courts, and, on the 6th August, 1860, the Judge dismissed the suit, holding that he had no jurisdiction, as the ordinary Civil Courts were barred from hearing such suits. In appeal the Sudder Court gave the following decision, which is specially noticeable as ruling that, though the ordinary powers of the Civil Courts had revived under the Notification of Government dated 22nd March, 1861,—they having been only suspended during the existence of the Courts of Special Commission,—yet all claims in respect to property seized as forfeited are subject to the general provisions of the Special Commission Act.

JUDGMENT.—"We see no reason to alter the decretal order of the Judge.

"We entirely agree with him in thinking that the Civil Courts had no jurisdiction, at the time he decided this case, in such cases, under any circumstances. Section 3, Act IX. of 1859, is imperative as to the Special Commissioners alone having jurisdiction in such cases after its enactment of that Act; and, if the plaintiff had any claim originally, he had it under Sections 3 and 4, Act XXV., 1857, the provisions of which the Special Commissioner could alone carry out subsequent to the passing of Act IX. of 1859, till the ordinary powers of the Civil Courts were revived, under the Notification of Government dated 22nd March, 1861.

"We look upon the order of the two Special Commissioners,—under which the plaintiff was referred to the Civil Court, on the ground of the Special Commission not having jurisdiction,—as a nullity, inasmuch as by law three Commissioners were bound to sit. We are of opinion, then, that this case must be treated by the Civil Courts as though that order had not been passed, and it had come with other cases for adjudication by them under the Notification of Government above-mentioned. We remark that, on a reference by the Judge of Seharunpore to this Court, he was informed, in the letter of the Register to his address No. 862, dated 31st May, 1861, that, under Section 3, Act IX. of 1859, the ordinary powers of the Civil Courts had revived under the said Notification,—they having been only *suspended* during the existence of the Courts of Special Commission; but that all claims in respect to property seized as forfeited are subject to the general provisions of Act IX. of 1859. This was an extra-judicial opinion, but we now adopt it judicially. Treating the case, then, in the manner above-noted, we hold that the plaint must be dismissed, inasmuch as it was not brought into the Civil Court within a year of the date of seizure. We remark, also, that we accept the arguments, urged orally, as to the plaintiff not being within time, on the assumption, for argument's sake, that it was sufficient for him to sue within a year from either the date of the confirmation of the confiscation by the Supreme Government or from the date of the grant to Rajah Bhowanee Sing; and as to the order of the Collector, within a year from the date of which the plaintiff did sue, being a legal nonentity. It has been urged by the plaintiff that Government, in its answer in the Civil Court, allowed that the estates had been granted to Rajah Bhowanee Sing, subject to its incumbrances; but this statement of Government, in our opinion, amounts only to this,—that if such incumbrances existed, and were legally claimed, Government was not answerable for them, but Rajah Bhowanee Sing, and they have been held by us not to have been illegally claimed

" With reference to this order of dismissal, and the objection raised under Section " 343, Act VIII., 1859, by Rajah Bhowanee Sing on the point, we make plaintiff pay " his own costs and those of Rajah Bhowanee Sing.

" Order of Judge affirmed, with the exception of so much of it as relates to the " costs of Rajah Bhowanee Sing, which are to be paid by plaintiff, in addition to his " own costs of appeal, payable by plaintiff."

61. This was a most important ruling, as it had been found, especially in Bareilly, that persons who had brought forward no claims against confiscated properties while the Special Commission Act was in force, had on its expiry brought actions in the Regular Courts; and in some instances the Civil Courts had decided these claims without paying attention to the special limitation provided in that Act, that all suits, being claims to confiscated property, should be brought within one year of the date of seizure of the property.

62. The Board beg to suggest that advantage be taken of these Annual Reports for them to bring to the notice of Government any important decisions affecting Revenue practice which may have been passed by the Sudder Court in cases other than those to which Government is a party.

63. For example, I am to refer to the case noted in the margin, in which the effect of the Court's decision is to bar Government from continuing a farm with the heirs of a deceased farmer, although the period of the farm has not expired.

Sudder Court decision dated 24th November, 1863, page 469.—Binda Singh (plaintiff), appellant, *versus* Mussumat Zannut Beebee, Nizam-ood-deen, and others (defendants), respondents.

I have the honor to be,
SIR,
Your most obedient Servant,
G. H. M. BATTEN,
Secretary to the Board of Revenue,
North-Western Provinces.

No. 144A. OF 1864.

FROM

R. SIMSON, ESQUIRE,
Secretary to the Government of the
North-Western Provinces,

To

G. H. M. BATTEN, ESQUIRE,
Secretary to the Sudder Board of Revenue,
North-Western Provinces.

DATED NYNEE TAL, THE 30TH JUNE, 1864.

JUDICIAL DEPT. (CIVIL.)

SIR,

I AM directed to acknowledge the receipt of your letter No. 386, dated 11th instant, submitting a Report shewing the results of the litigation to which Government was a party during the years 1861-62 and 1862-63, and in reply to communicate as follows:—

2. The Sudder Board of Revenue observe that these Reports are in Bengal prepared by the Legal Remembrancer, but that in these Provinces they devolve upon the Board; that, in order to furnish full and copious Annual Reports, more detailed information is required, and they propose, with Government sanction, to issue new rules, with this object in view. The Board are requested to submit these proposed rules for the approval of Government.

3. With reference to the suggestion that general instructions be given to all the administrative and executive Departments that they should consult the Board, through

the Collector, when sued or instituting suits on behalf of Government, I am desired to state that the necessary orders will be issued to the Departments concerned.

4. It appears that in the two years under report 353 cases were pending to which Government was a party. Of these, 243 were decided,—187 for Government, and 56 against Government; 22 cases were compromised out of Court. These results are very favorable to Government.

5. The number of cases shewn is much larger than would usually be the case were no special causes at work. No less than 192 of these cases had their causes of action in the events of 1857, and consequent confiscations.

6. No special remarks seem to be required on the other portions of the Report.

7. His Honor observes that the time and labor necessary for the preparation of such Reports as that under review is no doubt great; but he hopes that the next Report will be submitted with less delay, and in this case important decisions affecting Revenue practice may be brought to the notice of Government in these Reports.

8. With reference to the last paragraph of the Report, I am to remark that the decision appears to be in accordance with the ruling of Government that farms are neither heritable nor transferable.

I have the honor to be,

SIR,

Your most obedient servant,

R. SIMSON,

Secretary to the Government of the North-Western Provinces.

No. 776 OF 1864.

FROM

W. CHICHELE PLOWDEN, ESQUIRE,

Secretary to the Board of Revenue, North-Western Provinces, Allahabad,

To

R. SIMSON, ESQUIRE,

Secretary to the Government of the North-Western Provinces.

DATED ALLAHABAD, THE 27TH OCTOBER, 1864.

SIR,

REVENUE.

Present:
W. MUIR, ESQ., *Senior Member*;
and
R. MONEY, ESQ., *Junior Member*.

I AM directed by the Board, in their capacity of Legal Remembrancer, to submit the accompanying Report by them of suits in which Government has been a party during the year 1863-64.

2. This Report would have been submitted at an earlier date, but the divisional returns from which it is compiled were not furnished to the Board on the dates prescribed. The Rohilcund and Benares returns have been specially delayed—the former not having been received till the 19th ultimo, the latter till the 30th ultimo.

3. The Commissioner of Rohilcund has explained that his return was delayed by the Bijnour statements being incorrect. The Commissioner of Benares also explains the delay in a similar manner.

4. In future the Board will expect greater punctuality in the submission of these returns; but, as this is the first year in which they have been made up in the lately prescribed form, the delay may be accounted for by that circumstance.

5. In the year under report there have been in all 208 cases pending and under trial in the Courts, Government being either plaintiff or defendant. In the year 1862-63 there were 175 cases reported; but there is reason to believe that the returns of that year were not so complete as those which have now been compiled.

6. Subjoined is a statement, drawn up in the same form as that given last year, showing the mode in which the cases under trial have been disposed of, and their classification :—

	Government, Plaintiff or Appellant.						*Government, Defendant or Respondent.*					
	Instituted and pending.	Decided in favor of Government.	Against Government.	Total decided.	Percentage for Government.	Percentage against Government.	Instituted and pending.	Decided in favor of Government.	Against Government.	Total decided.	Percentage for Government.	Percentage against Government.
Original Suits, ...	14	4	1	5	80·	20·	114	59	20	79	74·6	24·4
Regular Appeals, ...	3	2	0	2	100·	0	36	15	2	17	88·2	11·8
Special Appeals, ...	2	1	0	1	100·	0	14	6	1	7	85·7	14·3
Applications, ...	10	5	0	5	100·	0	15	2	0	2	100·	...
	29	12	1	13	92·3	7·7	179	82	23	105	78·09	21·01

7. For facility of comparison, the table for 1862-63 is subjoined :—

Original suits, ...	17	13	0	13	100·	0	105	44	24	68	64·7	35·3
Appeals, ...	9	1	3	4	25·	75·	39	21	4	25	84·	16·
Applications, ...	3	1	0	1	100·	0	2	2	0	2	100·	0

8. It will be seen that the cases in which Government has been compelled to go into Court to assert its rights are few in comparison with those in which Government has been sued—*viz.*, 29 against 179.

9. The results of the litigation in this class of cases must be considered as very satisfactory. Out of 29 cases pending, 12 have been decided in favor of Government, and but one against Government. The percentage in favor of Government is 92·3, to 7·7 against Government. Of the cases in which Government has been impleaded (179 in number), 114 were original suits, 36 regular appeals, 14 special appeals, and 15 miscellaneous applications, principally for reviews of judgment and execution of decrees. The percentage of decisions in favor of Government shews an increase on the returns for 1862-63, thus :—

	1863-64.	1862-63.
Original Suits, ...	74·6	64·7
Appeals—Regular, ...	88·2	84·
Appeals—Special, ...	85·7	...
Applications, ...	100·	100·

10. The cause of this favorable increase is to be found partly in the smaller number of cases arising out of the events of 1857.

11. In the two years reported in my letter dated 11th June, 1864, No. 386, submitted by Mr. Batten, there were no less than 192 cases, out of a total of 353, which had their origin in confiscations, or 54·7 per cent.

12. In 1863-64 the confiscation cases had fallen to 70 out of 208, or to 33·6 per cent. on the total.

13. The following is a brief classification of the cases under litigation :—

70 cases originated in the events of 1857; of these, 38 were decided,—24 in favor of Government, and 14 against; of these 14, however, 6 were compromised by Government.

70 cases were instituted to try the awards of Revenue and Magisterial Authorities. 42 of these were decided,—37 in favor of Government, and 5 against.

32 cases were connected with escheats and Crown domains. 17 of these were decided,—15 for Government, and 2 against Government. Three cases arose out of Exchequer proceedings (recovery of Revenue balances), and were all decided in favor of Government.

14. Of the remaining 33 cases, nine were connected with property under the administration of the Court of Wards: four of these were decided during the year,—two for Government and two against. There were also nine cases of breach of contract, and two of tort.

15. Since the submission of their last Report, the Board had issued instructions for the preparation of the annual returns by District and Divisional Officers. These returns should show in every case the nature of the suit, but the Board's instructions have not been thoroughly carried out in the statements lately submitted, and the nature of the claim is frequently given in general and not very accurate terms. It has been necessary, in compiling the present Report, to go into the file of each particular case to ascertain its exact nature.

16. The greatest number of suits instituted occurred in the Benares Division; the smallest number in that of Allahabad. In Benares there were 52 cases; in Allahabad, 16 cases.

17. It is worthy of remark that no suits have been instituted either by or against Government in those divisions where the administrative authorities exercise judicial functions, *viz.*, in Kumaon and Jhansie. The Board draw no argument from this fact, though they deem it worthy of notice.

18. Two very opposite deductions may be inferred: either the administration is in these districts better than in those where judicial powers are vested in separate officers, or the people conceive it futile to contest on the civil side the acts of administrative officers who are also invested with judicial authority.

19. It remains only to notice those cases which present points of interest.

No. 1.—Collector of Seharunpore *versus* Suraj-ood-deen, *alias* Nusseer-ood-deen.

There are no legal questions of any interest involved in this case; but the facts which led to its institution are curious.

This was an action to recover Rs. 509-9-4, being the amount of pension which Suraj-ood-deen had obtained by fraud. The defendant in this case had been proceeded against in the Criminal Courts, and had been punished under Section 19, Regulation IX. of 1807, on a charge of false personation.

In complicity with the widow of a deceased pensioner (Zafur-ood-deen), who, in lieu of a resumed rent-free grant, had been in receipt of Rs. 20-6-0 per annum as a Government pension, the defendant succeeded in realizing, from 1836 to 1860, no less than Rs. 509. It was to recover this sum, this action was brought. It has not yet been decided.

20. The Board notice this as illustrating some of the cases which have been compromised under the Board's orders—the executive authorities having taken an obviously illegal course in the matter.

No. 2.—Amanee Begum *versus* Government (Collector of Bareilly).

The plaintiffs in this case were proprietors of certain lands in Bareilly which had been mortgaged by their ancestors. The property was held in coparcenary by them

and one Nukkee Alli Khan. Nukkee Alli Khan was hanged for treason, and his property had been confiscated.

In March, 1861, the plaintiffs exercised their equity of redemption, and paid off the mortgage in full.

In August, 1861, the Collector, as representative of Nukkee Alli Khan, ousted the plaintiff from that person's share of the estate, without contributing Nukkee Alli Khan's quota of the mortgage money.

21. The Board, on these circumstances coming to their notice, declined to approve of the defence proposed by the Collector, and directed him to compromise the case, pointing out that the plaintiffs could not be ejected from Nukkee Alli Khan's share of the property till his quota of the mortgage had been repaid to them. The mortgagers were entitled, one or any of them, to redeem the whole mortgage, leaving it to the co-sharers to recover their share after paying their quota of the loan and of the costs incurred in the redemption. (*Cf.* case No. 161 of 1851, "Selected Decisions, Sudder Dewanny Adawlut," Vol. I., page 177).

No. 3.—Salloo Ram Narain *versus* Government (Collector of Moradabad).

22. This was an action to recover Rs. 673-13-6, to be collected at a cattle market held at Byth, in the Moradabad District, and Rs. 500 damages for an alleged trespass on the part of Government; also to cancel the Magistrate's order putting the market under the immediate control of the Police.

The case originated in action taken by Mr. Strachey, as Magistrate, with a view to put down the very prevalent crime of cattle-lifting. It had been found in practice that the market held in this village was nothing more or less than a mart for the disposal of stolen cattle. The Magistrate therefore issued an order that a Police Officer should be deputed to the market, who should record all sales of cattle.

The market tolls had been leased to the village accountant for Rs. 50 per annum by the original proprietors, whose estate had since been purchased by the plaintiff in this suit. The lessee of the tolls petitioned the Magistrate to rescind his order, as interfering with the lessee's profits.

On enquiry into the case, it appeared that the market tolls had not been recorded at the Settlement in the village record of rights, and the levy of tolls by the proprietors or their representatives was held to be illegal (*Cf.* "Directions to Settlement Officers," paras. 56 and 146).

This being the case, the Collector assumed the management of the market, and the tolls levied there were credited to Government. This was the trespass averred in the suit, and it was to recover these tolls the action was brought.

The plaintiff obtained a partial verdict, but he has appealed against the decision, and the result will be noticed in the next year's Report, the appeal case being still undecided.

Whether the levy of tolls by the proprietors or their lessees was illegal or not, it would seem that the plaintiff in this instance had no case—he represented only the original proprietors. But the original proprietors had leased away their right to levy tolls, and the lessee only would have a *locus standi* in the Courts.

No. 4.—Government (Collector of Furruckabad) *versus* Kurm Alli.

23. In this case the decision introduces novel principles as applied to the Law of Bailments and of Contract. Kurm Alli, the defendant, was a sale ameen, and had deposited for his own convenience, in the Government Treasury at Furruckabad, money amounting to Rs. 300.

In June, 1857, after the disturbances had commenced, Kurm Alli, anxious for his money, applied to the Tehseeldar at an outlying Sub-Treasury and obtained the equivalent of his deposit. But the Tehseeldar, who in paying this money was acting without orders, took a receipt from Kurm Alli, in which it was stipulated that he should repay the money if it were demanded from him.

The cash in the Government Treasury at Furruckabad having been plundered in the Mutiny, and with it Kurm Alli's original deposit, the Collector demanded re-payment of the sum which had been paid by the Tehseeldar. Kurm Alli ignored the terms of his receipt, and refused to pay. This action was the result.

The suit was dismissed by the Sudder Ameen, on the ground that defendant was entitled to his money, and that, whether he received it at the Treasury in which it had been deposited or at a Sub-Treasury in another place, he was equally entitled to receive it.

The District Officer was anxious to appeal this decision, but the Board would not press the case.

In strict law, however, and even in equity, the defendant was liable for the money. There was an express contract, of which the receipt was evidence, to repay the money if it was demanded. The consideration for which this promise was made comes manifestly within the legal definition of what is a good and valuable consideration, and, on the *do-ut-des* principle, he was bound to repay the money in accordance with his acknowledgment. But, taking the more favorable view for the defendant, looking at the case as one coming under the Law of Bailments, was the Judge's decision good? Could defendant have recovered his deposit had he brought an action?

There is good reason for saying the decision was not good law, and that, had Kurm Alli sued to recover the money he had deposited, which had been plundered with the Government treasure, he would have been cast.

No. 5.—Suda Sookh *versus* Sheo Gunga Buxsh Singh and Government.

24. The facts of this case are as follows:—Government had succeeded to the rights of Bhowany Singh and Bhugwan Singh, who owned certain estates in the Cawnpore District. This property had been confiscated by Government, on account of the owners' treason. Previous to the confiscation—in 1858, April 18th—the property had been mortgaged, and the mortgagee's interests had been sold to Suda Sookh.

Five days after the order of confiscation, Suda Sookh instituted proceedings in the Judge's Court, under Regulation XVII. of 1806, with a view to a foreclosure. Government was impleaded in this application. A certificate under Section 8 of the Regulation was furnished; but neither the original mortgagor nor the Government tendered the redemption-money within the year of grace. In the meanwhile the Special Commission Courts had been formed.

The estate in question was after this conferred by Government upon Chowdree Luchmun Singh; but Suda Sookh brought his claim to the property before the Revenue Authorities, and he was put in possession by the Collector on the 17th August, 1861—the Judicial Authorities say, under the Board's Orders dated 27th July, 1861; but this is incorrect. The Collector had erroneously reported that the mortgagee had obtained a decree. The Board said that, on the receipt of certain further information which they had called for, release would be recommended to Government, and the orders in reply communicated in due course. It was upon the order communicating this view that the Collector took upon himself to give up the villages. The Board discovered the mistake before addressing Government, and ordered the mortgagees again to be ousted. This order was passed on the 22nd February, 1862.

Suda Sookh then brought his action against Government to recover possession of the property—his cause of action originating, as he contended, on the 25th February, 1862, when the order to oust him was passed by Commissioner.

For the Government, it was urged that the cause of action really arose on the 15th April, 1858, and the plea of limitation, based upon Act XXV. of 1857 and Act IX. of 1859, was successfully urged before the Judge of Cawnpore.

To reverse this judgment, the plaintiff appealed to the Sudder Court.

The Sudder Court, in a judgment dated 27th April, 1864, decided against Government. They held that the action of the Collector, being based on the Board's orders, barred the Government from pleading limitation; that by the Collector's conduct the plaintiff's cause of action was brought down to February, 1862, as he contended, and had its rise on the Commissioner's order of that date, issued under the authority of the Board, for the resumption of the property which had been unconditionally released to plaintiff.

The Court's judgment is founded upon what the Board hold to be a material error of fact.

The Board never did authorize the release of the village to the mortgagee (Suda Sookh); the Court, in fact, could not have had before them the Board's orders. Those orders are contained in paragraph 9 of the Board's letter to the Collector No. 280, dated 6th July, 1861, and are as follows:—

No.	Name of Village.	Nature of right, whether of mortgagor or mortgagee.
147	Hussunpore Doobkee, ...	Mortgagor.
146	Khundee, ...	Ditto.
179	Russoolabad, ...	Mortgagee.
136	Ishaknugger, ...	Mortgagees.
164	Jania, ...	Mortgagee.
167	Sowaipore, ...	Ditto.
172	Ooryara, ...	Ditto.
173	Chuch Ooryara, ...	Ditto.
168	Chundunpore, ...	Ditto.
154	Kabulpore Surgaon, ...	Ditto.
155	Ismailpore, ...	Ditto.
69	Jeora Nawab Gung, ...	Ditto.

"On the receipt of the "further information now "called for, which should "be submitted through "the Commissioner, the "case noted in the margin "will be recommended to "Government for release, "and the orders in reply "communicated to you in "due course."

25. When authorizing the ousting of Suda Sookh, in their letter No. 65, dated 15th March, 1862, they observed to the Commissioner,—"You are right in supposing "that the Collector has acted without authority in putting Suda Sookh into possession. "Moreover, the Board's intention to recommend release in his favor was based on the "supposition that he had obtained a decree, and that there was no further defence possible to the Government. It is clear that Suda Sookh only obtained the usual certificate "to enable him to sue; that the real points at issue between him and the Government "were advisedly never taken up by the Judge, and have never yet been tried. It is a "matter of doubt whether it was within the Judge's jurisdiction to grant a certificate "after the special Court had been opened. But at all events Suda Sookh was bound to "go into the Special Courts—to which, indeed, he was referred by the Judge. The "Board have applied for a review of judgment on the part of Government, as the Court's "judgment was based on error."

26. But in noticing this case they particularly wish to draw attention to the doctrine enunciated regarding the position of principal and agent.

27. The Court has held that the Government are bound by the acts of the Collector. Putting aside the question whether the Collector had correctly or incorrectly represented the circumstances on which the Board had to take action, it must be borne in mind that the Collector was never specially authorized to release this property, though the Board informed him of their intention to recommend release on the receipt

of certain further information which they had called for, and added that orders on the subject would be issued to him on the receipt of the Government reply. It is clear, therefore, that the Collector, acting as the Agent of the Board (and it is only in that sense that his actions can be held to bind the Board or Government), exceeded the authority with which he was invested.

28. Now, the general rule in these cases is stated by one of the greatest authorities* on the subject, in the following words:—

* "Story on Contracts."

29. "No act or contract by an agent, however proper in form, is binding upon his principal, unless it be within the limits of his authority. He is therefore bound to observe the exact instructions of his principal, and, if his act or contract vary materially therefrom in nature, extent, or degree, it will not be binding upon the principal, whether the variation be beneficial or not; for the question is whether the agent has done his duty strictly, and not whether he has acted with good motives."—"Story on Contracts," page 223. It may also be noticed that Government has been forced into this action by the careless mode in which the Collector first expressed himself. The Collector represented that Suda Sookh had obtained a decree against Government. Suda Sookh, as it afterwards appeared, had done no such thing: he had obtained merely a certificate under Section 8 of Act XVII. of 1806. It was on this misrepresentation by the Collector that the Board informed him they would, on the receipt of further information, recommend this property for release.

30. The disclosure of their intentions, however, conferred no authority upon the Collector to act as he did in releasing the property.

31. The Board contend that the Sudder Court have improperly interpreted the law in this case.

32. The case of Zuhoor-ood-deen *versus* Government, which was noticed in the last Annual Report, has been decided in appeal in favor of the Government.

33. This also has been the result of the appeal in the case of Banee Lall *versus* the East Indian Railway Company and Government.

34. There remains but one other case to notice—*viz.*, that of Sufat Ahmed Khan and others *versus* Collector of Ghazeepore. This is one of several arising out of the same circumstances.

35. The village accounts of the District of Ghazeepore had been proved to be extremely incorrect, and the necessity for revising them had been forced on the notice of the Board and of Government. The zemindars were invited by proclamation either to prepare them at their own cost, without assistance from the Officers of Government, or to contribute a portion, amounting to Rs. 8 per 100 acres, of the cost which would be incurred,—in which latter case the Collector would undertake to complete the accounts, and the measurements on which the accounts must be based.

36. No coercion was used by the District Revenue Authorities; but the zemindars generally were unable to effect the measurements of their estates without the Collector's assistance; and they paid without demur the sums that were required. Subsequently, however, several zemindars sued for the recovery of the amounts which they had willingly paid, or for exemption from the demand.

37. By Sections 12 and 13 of Regulation IX. of 1833, zemindars are bound to prepare and deposit correct village accounts in such manner as may be directed by the Board of Revenue; and the two following sections provide that any zemindar who may fail to file the required accounts shall be deemed incompetent to sue, oust, or distrain the property of any ryot, on any pretext whatever.

38. The suits were defended on the above grounds; three were dismissed with costs, and the remaining four were withdrawn.

39 The plaintiffs in the suits which had been dismissed appealed to the Judge. Two of the appeals were dismissed, and in the third case—that of Sifat Ahmed—the case was remanded for retrial. The claim had been dismissed by the Principal Sudder Ameen as not cognizable by the Civil Court; but this decision was overruled by the Judge, on the ground that, by Section 1, Act VIII., 1859, general permission is given to hear all Civil cases except those whose cognizance is especially barred by a Regulation or any Act of the English or Indian Legislature; and it had not been shown that the claim in question was so barred.

40. Sifat Ahmed's claim was that the khusreh, khuteonee, and other papers prepared in 1841, under Regulations VII., 1822, and IX., 1833, be upheld, and that Government be barred from making a remeasurement and revision of the papers.

The Collector was directed to answer, on the part of Government, that the zemindars are bound by Sections 12 and 13, Regulation IX., 1833, to prepare and deposit correct village accounts in such manner as may be directed by the Board of Revenue.

41. The khusreh and khuteonee prepared 23 years ago do not correctly represent the present status of the village, and remeasurement is necessary to fulfil the requirements of the above-mentioned Regulation.

42. The Legislature having provided that the papers should be prepared in such manner as the Board may direct, the interference of the Civil Court in regard to the manner of their preparation is precluded.

43. The case is still pending.

I have the honor to be,
SIR,
Your most obedient Servant,
W. C. PLOWDEN,
Secretary.

No. 263A. OF 1864.

FROM

R. SIMSON, ESQUIRE,
Secretary to the Government of the North-Western Provinces,

To

W. CHICHELE PLOWDEN, ESQUIRE,
Secretary to the Sudder Board of Revenue, North-Western Provinces.

DATED NYNEE TAL, THE 16TH OF NOVEMBER, 1864.

SIR,

JUDICIAL DEPT. (CIVIL.)

I AM directed to acknowledge the receipt of your letter No. 776, dated the 27th ultimo, shewing the results of the litigation to which Government was a party during the year 1863-64.

2. It is observed that 29 suits were instituted by Government, and 179 against Government. Of the 29 suits, 92 per cent., and of the 179, 78 per cent., were decided in favor of Government. This result, I am to remark, is very satisfactory.

3. Of the cases commented on in paras. 19 to 43 of your Report, the only one calling for special notice is No. 5, in regard to which the Board are of opinion

that the judgment of the Sudder Court is based upon erroneous data, and also that the doctrine enunciated in their decision as regards the position of principal and agent is not in accordance with the law.

4. On the first point no action is necessary, as the Board have applied for a review of judgment. In regard to the second, I am desired to state that the Lieutenant-Governor is of opinion that the law is as stated by the Board,—the act of an agent being binding on his principal only when it is within the limits of his authority.

5. It is not, however, clear, from the brief summary of the case given in your letter, if the Sudder Court considered the question whether the Collector had or had not exceeded his authority, or whether the point was raised in appeal; it is possible that it was not pleaded at all, and that the Court held the acts of the Collector as binding, upon the presumption that they were not *ultra vires*. The Board are therefore requested to report more particularly as to this point, and to submit a copy of the Court's decision for the information of Government.

I have the honor to be,

SIR,

Your most obedient Servant,

R. SIMSON,

Secretary to Government,
North-Western Provinces.

No. 657 OF 1865.

FROM

W. CHICHELE PLOWDEN, ESQUIRE,

Secretary to the Board of Revenue,
North-Western Provinces.

TO

R. SIMSON, ESQUIRE,

Secretary to the Government of the
North-Western Provinces.

DATED ALLAHABAD, THE 28TH SEPTEMBER, 1865.

SIR,

Present
R. MONEY, ESQ., *Senior Member*
and
C. B. THORNHILL, ESQ., *Offg Junior Member.*

I AM desired to submit, for the information of His Honor the Lieutenant-Governor, the accompanying Report on the litigation to which Government has been a party during the year 1864-65, drawn up by the Board in their capacity of Legal Remembrancers.

2. There has not been so much time lost in the submission of this year's Report as was the case in previous years, but there is still much room for improvement. The Board have again to regret the delay which has occurred in the submission of the divisional returns. These were furnished as noted in the margin. The last received was that for Benares, which only reached the Board on the 28th ultimo. The Board attribute no blame to the Commissioner for this delay, but they cannot exempt from censure the several

Meerut Division,	received	14th June, 1865
Agra	ditto,	ditto 6th July, 1865.
Rohilcund	ditto,	ditto 22nd July, 1865.
Allahabad	ditto,	ditto 22nd June, 1865.
Benares	ditto,	ditto 28th August, 1865.
Kumaon	ditto,	ditto 9th June, 1865 (blank return).
Goruckpore	ditto,	ditto 23rd May, 1865.
Jhansie	ditto,	ditto 10th June, 1865 (blank return).

District Officers of the division (particularly the Collector of Ghazeepore) who have failed either to comprehend or to act upon the very plain instructions conveyed in the Board's Circular Order dated 29th July, 1864.

3. In the year under report there have been 253 cases under litigation in the Civil Courts in which Government was interested either as plaintiff or defendant.

4. The accompanying table shows the mode in which these cases have been disposed of, and their classification.

5. This statement has been slightly modified in form from that used in previous years: a column has been added to show the cases pending at the commencement of the year, distinguishing them from those instituted during the year. By adhering to this form in future, it will be at once apparent whether the litigation to which Government is a party is really increasing, or the reverse.

6. For purposes of comparison, the return for 1863-64 is appended, in juxtaposition with that for 1864-65 :—

	Government Plaintiff.								*Government Defendant.*							
	Pending at the commencement of the year.	Instituted during the year.	Total.	Decided in favor of Government.	Decided against Government.	Total number decided.	Percentage of decisions in favor of Government.	Percentage of decisions against Government.	Pending at commencement of year	Instituted during the year.	Total.	Decided in favor of Government.	Decided against Government.	Total number decided.	Percentage of decisions in favor of Government.	Percentage of decisions against Government.
1864-65.																
Original Suits, ...	9	13	22	13	4	17	76·5	23·5	37	99	136	51	40	91	56·	44·
Regular Appeals, ...	1	10	11	2	1	3	66·7	33·3	19	15	34	18	4	22	81·8	18·2
Special Appeals, ...	1	2	3	...	1	1	...	100·	7	2	9	6	...	6	100·	...
Miscellaneous Applications, ...	5	22	27	10	3	13	76·9	23·67	10	1	11	6	1	7	85·7	14·3
Total, ...	16	47	63	25	9	34	73·5	26·5	78	117	190	81	45	126	64·2	35·8
1863-64.																
Original Suits, ...	...	...	14	4	1	5	80·	20·	...	...	114	59	20	79	74·6	24·4
Regular Appeals, ...	...	...	3	2	...	2	100·	...	...	...	36	15	2	17	88·2	11·8
Special Appeals, ...	...	..	2	1	...	1	100·	...	...	...	14	6	1	7	85·7	14·3
Miscellaneous Applications, ...	...	...	10	5	...	5	100·	...	...	...	15	2	...	2	100·	...
Total, ...	...	...	29	12	1	13	92·3	7·7	...	...	179	82	23	105	78·09	21·01

7. Of the 253 cases shewn in the above table, 164 were instituted during the year under report. Of these, 112 were original suits, 25 were regular appeals, 4 were special appeals, and 23 miscellaneous applications. Excluding the miscellaneous applications, which refer generally to executions of decree, &c., Government was the moving party in only 25 cases, of which 12 were in appeal.

8. It will be seen that the total litigation to which Government has been a party in 1864-65 has somewhat exceeded that reported in 1863-64. The increase is more nominal than real. Many suits which formerly were initiated without any notice being given, except perhaps to the heads of departments interested in the action, are now regularly reported to the Board, with a view to determine whether the case shall be instituted or defended.

9. The results are not so favorable this year as last.

10. In round numbers, 9 suits out of 10 decided last year, of those instituted by Government were decided in favor of Government; this year those decided in favor of Government, where Government has been plaintiff, have been 7 out of 10. Of the

suits defended by Government, the percentage of those decided in its favor has fallen from 78 to 64.

11. Subjoined is a statement showing the percentage of cases decided in favor of Government during the past three years:—

	1864-65.	1863-64.	1862-63.
Original Suits, ...	58·18	71·6	64·7
Regular Appeals, ...	80·	88·2	84·
Special Appeals, ...	85·7	85·7	..
Miscellaneous Applications, ...	76·7	100·	100·

12. It is satisfactory to find that in the Appellate Courts the falling off has been but small, and that in the case of special appeals there has been no falling off whatever, in the percentage of decisions in favor of Government.

13. There is, however, a great falling off in the number of decisions recorded in favor of Government in original suits, both as compared with 1863-64 and 1862-63.

14. This may perhaps be accounted for by the very uncertain nature of the law as administered by the Lower Courts,—an uncertainty which is sometimes noticeable even in the higher tribunals. In whatever manner it is to be accounted for, the results are not satisfactory.

15. The following is a classification of the cases in which Government was concerned:—90 cases were connected with the events of 1857, and the confiscations arising therefrom; of these, 36 were decided in favour of Government, and 22 against Government, but of this latter number six were compromised.

16. 69 cases were instituted to contest the awards of Revenue and Magisterial Authorities; of these, 29 were given in favor of Government, and 15 against, of which 3 were compromised.

17. 32 suits were connected with escheats and Crown domains; of these, 23 were decided for Government and 5, of which one was compromised, against Government.

18. There were 4 suits arising out of Exchequer proceedings (recovery of Revenue balances), which were all decided in favor of Government.

19. Of the remaining cases, 39 were instituted by or against the Court of Wards; 11 of these were decided for the Court, and 12 against it; there were also 13 cases of breach of contract; 6 of these were decided,—5 in favor of, and 1 against, Government.

20. The greatest amount of litigation pertains to the Benares Division, as in the previous year; the least amount to Agra and Allahabad, which are equal.

21. The divisions rank as follows:—

1.—Benares,	69 cases.	4.—Goruckpore,	35 cases.
2.—Rohilcund,	50 „	5.—Agra,	30 „
3.—Meerut,	39 „	Allahabad,	30 „

22. It is curious to have to notice again this year that no suits have been instituted either by or against Government in the Non-Regulation Divisions of Jhansie and Kumaon.

23. The character of the litigation varies considerably in the several divisions.

24. In Benares, the mass of litigation relates to Court of Wards' cases, and to suits set aside magisterial or Revenue Officers' awards. There was but one single case connected with confiscation for the rebellion. The Court of Wards' cases, however, were 32, and the second class 30, in number.

25. In Rohilcund, on the other hand, 39 out of 50 cases related to confiscations consequent on the events of 1857.

26. In Meerut, there were 14 cases connected with confiscations, and 15 connected with escheats.

27. In Agra, one-third of the litigation related to escheats, and one-third to confiscation suits.

28. In Goruckpore, 24 out of 35 cases were suits to try the awards of Government Officers, and the greater part of these went to contest the decisions of the Settlement Officers.

29. The amount of costs incurred, awarded, and recovered during the year is given below :—

Memo. of Costs.

Division.	Incurred.	Awarded.	Recovered.
Meerut, ...	1,084 11 7	892 15 10	321 6 10
Agra, ...	3,853 10 10	778 5 1	748 10 6
Rohilcund, ...	3,348 4 6	1,026 6 9	286 7 8
Allahabad, ...	541 8 8	306 2 2	303 13 2
Benares, ...	8,129 12 10	3,766 7 7	2,148 10 9
Goruckpore, ...	1,575 14 10	1,350 1 10	1,612 12 1
	18,533 15 3	8,120 7 3	5,424 13 0

30. In the instance where the costs recovered are more than those awarded, sums due for the previous year have been recovered. Similarly, the amount of costs awarded is no criterion of success or otherwise in the prosecution of suits, as costs incurred in the year, should the Government be successful, may be, and are very frequently, not awarded till the ensuing year.

31. It remains only to notice those cases which, either from the circumstances out of which they arose or from the points of law which have been involved in them, are of special interest.

32. The Board only notice this case as remarkable for the procedure of the Judge, rather than from the circumstances which gave rise to the suit, or from any legal point involved in it.

No. 1.—Mrs. Butterfield *versus* Government (Collector of Seharunpore).

33. This was an action brought to recover Rs. 515-10-7, being the amount realized from the sale of the personal property of the late Mr. Dalby, which had been credited to Government in the Seharunpore Treasury. The suit was defended, on the part of Government, by the Collector of Seharunpore. In the course of the action, the Judge served the following injunction on the Collector :—

"Pending the receipt of a reply to the reference this day made to the Secretary to Government, the Collector is requested not to take any steps in the matter till such time as he hears further from the undersigned."—S. J. Becher, *Judge*.

34. This procedure appears to the Board to have been somewhat extra-judicial. The reference made to the Secretary to Government seems, from the reply received, to have been a recommendation for the refund of the sum claimed. The refund was sanctioned by Government. The case in question was never reported to the Board; if it had been, the proceeding would probably have been stopped at the commencement.

No. 2.—Sahoo Ram Narain *versus* Government (Collector of Moradabad).

35. This case was noticed in the last year's Report (No. 3). The plaintiff had obtained a partial verdict, but, being, dissatisfied, had appealed. In appeal the Government has been successful: the suit has been remanded for retrial, the Zillah Judge's decision being reversed. The objection taken by the Government in appeal was,—"that the suit was not cognizable under Section 9, Regulation VII. of 1822, and Section 9, Regulation IX. of 1825, as the cess sued for by plaintiff was not recognised at, nor included in the records of, Settlement, and its levy was consequently illegal. This objection was duly urged in the Court below, but without any notice being taken of it.

36. The Sudder held that this plea was valid, and that the Judge should have disposed of it, finding whether the levy of the cess sued for was recognised and duly recorded at the time of Settlement or not.

37. The case was therefore remanded for retrial on this point. The suit has not yet been re-decided, but the Board have little doubt what the decision must be.

No. 3.—Mussamat Goorulee and others *versus* Government (Collector of Bareilly).

38. This case illustrates a class of suits which has arisen out of the events of 1857. It is, however, of a very exceptional nature; but one other similar case has come to the notice of the Board within the last three years. This was an action to recover damages for the demolition of a house in the city of Bareilly, which was thrown down by the Military Authorities in 1858 for strategical purposes.

39. The suit has been successfully defended, on the plea that the Civil Courts have no jurisdiction in suits for damages caused by acts done by the Military Authorities at a time when Martial Law prevailed.

40. This case has been appealed by the plaintiffs, and the results will be noticed in the next Report.

41. Before, however, concluding their remarks on this case, the Board desire to quote a portion of the Principal Sudder Ameen's decision, which, as a specimen of judicial acumen, is worthy of extract. The opinion of the Advocate-General, to the effect "that the proprietors of houses at Kydgunje, which were pulled down by order of the Military Authorities as a measure necessary for the military protection of Allahabad in 1857, while Martial Law was in force throughout the district, cannot maintain any suit in a Civil Court against the Government in respect to such demolition," was quoted and relied on for the defence.

42. Adverting to this opinion, the Principal Sudder Ameen remarked in his decision as follows:—

"The opinion of the Advocate-General, being a ruling connected with the administration of the kingdom, cannot be interfered with by the Court. It is accordingly ordered that plaintiffs' claim be dismissed, with costs."

No. 4.—Syud Yad Ally and another *versus* Government (Collector of Futtehpore).

43. This is another case arising out of the events of 1857.

44. It is an action to contest the order of Government awarding the confiscated estate of a rebel to others of his village who had remained loyal.

45. The plaintiffs contend that they have a right of pre-emption on this property, and that the occasion for the exercise of this right arose when the confiscated property of the rebel passed into other hands.

46. The confiscated property not having been sold, it is difficult to understand on what grounds the claimants base their claim. Since the close of the year under report, this case has been decided in favor of Government.

No. 5.—Ranee Kayethanee *versus* Government (Collector of Muttra).

47. The preposterous nature of the claim advanced in this suit renders it remarkable. The plaintiff, with the persistence of her sex, has fought her suit with alternating success through all the Courts. The final success has rested with Government.

48. Plaintiff is the zemindar of 563 beegahs of khalsah land adjoining the ancient city of Muttra. In the administration-paper recording the rights and customs of the proprietors and their tenants, drawn up at the Settlement, a proviso was entered of which the following is the literal translation:—

"Of the refuse and manure produced by the cultivators and ryots, I, Chimmun Lall (Agent for the Ranee), am the proprietor of that produced by all the cultivators of the khalsah. If the necessity should arise *(wukt zuroorut)*, I will sell it to the cultivators or to strangers."

49. The Magistrate of Muttra, with a view to the proper conservancy of the city, erected from the Local Funds, aided by large subscriptions, a number of public privies, and from the management of these places a considerable profit accrued to the Local Funds.

50. Ranee Kayethanee considered that in making these arrangements and erecting these public privies the Magistrate of Muttra was intruding upon her property; and the Local Authorities not taking this view, she eventually brought an action to establish her possession and title to the refuse sweepings of the town of Muttra, valued at about Rs. 5,000, and to recover Rs. 4,071-2-0, principal and interest value of the town refuse from 1267 to 1268—total claim, Rs. 9,071-2-0.

51. The claim was defended primarily on the plea that plaintiff had no proprietary rights whatever in the city of Muttra, but was merely the proprietor of the khalsah land in the suburb of that city. Some technical objections were also taken to the claim.

52. In May, 1863, the Judge of Agra (Mr. Paterson) gave a decision which, though not entirely so, was in favor of the plaintiff, and which allowed her claim to be considered as the proprietor of the city refuse. But at the same time the Judge decided that the expenditure for town conservancy should be borne by the plaintiff. With this portion of the decision, which was not consistent with the Judge's finding that plaintiff was sole proprietor of the town refuse, the Ranee was not satisfied, and both she and the Collector on the part of Government appealed to the Sudder.

53 The decision of that Court is extracted below:—

"In the plaintiff's appeal, which is first in order, it is contended,—1st, that this "suit was not for a declaratory decree of proprietary right, nor yet for the possession "of the Muttra privies, but for the possession of the place where the refuse sweepings "are deposited after being removed from the privies; and therefore the Judge's decree "should have awarded possession of the place in question and not have been restricted "to a declaration of right;—2nd, that the decision of the Judge, under which the "expenditure for conservancy is ordered to be deducted from (plaintiff's) appellant's pro-"fits is unsound, inasmuch as she did not stipulate at the Settlement to apply any of "the profits sued for to meet the expenditure for the conservancy or the improvement "of the town; and the residents of Muttra are responsible by law for the conservancy

" expenditure; that it should therefore be defrayed either from the Government " Treasury, as being for the public good, or by a general cess on the inhabitants of the " town; that the plaintiff is not a resident of Muttra and is in no way liable for the " expenditure;—3rd, that the right in dispute was recognized by Government as be- " longing to plaintiff in the para. of the Settlement khewut relating to manure; that " Government, by the orders of the Collector in other cases, has admitted her right " since, and the Judge has declared it to extend over the whole town of Muttra, and " not to the 563 beegahs of khalsah land *only* on which she pays revenue; that, under " these circumstances, Government is not competent, either through its Revenue or " Magisterial Officers, to interfere with the exercise by her of this right, which has been " fully secured to her by the Settlement proceedings;—4th, that the Judge's decree " does not specify the amount of the claim decreed and dismissed, and the enquiry into " the amount of the profits ought not to have been reserved for the execution of " decree.

" The defendant's pleas in appeal are,—1st, that the order of a Magistrate regard- " ing town conservancy and the public weal cannot be set aside by the Civil Courts;— " 2nd, that the plaintiffs claim and the Judge's decision are based on the ground " of the whole town of Muttra being within the plaintiff's zemindaree, which is not " the case; that Muttra is an ancient city, the roads and lanes of which belong to " Government, and the ground occupied by houses is the property of their owners; " that plaintiff receives no rent for any of this land, as she would have done had she " been proprietor of it; that her concern with the town of Muttra is merely nominal, " and with the resumed maûfee lands in the suburbs is restricted to the collection " of the Government Revenue, and responsibility for its prompt realization, for which " she is allowed the usual percentage; that 563 beegahs of khalsah land in the " suburbs comprise the whole of her zemindaree, and the Judge's decision is therefore " incorrect."

" That the right of the plaintiff to the refuse sweepings of her tenants (culti- " vators) in the above khalsah land is recognized in the Settlement administration- " paper, and not her right to those of the whole town of Muttra; and her claim, con- " trary to the terms of the *wajib-ool-urz*, is untenable.

" That her claim is unfounded, because the privies were erected with funds raised " by a subscription paid by the citizens of Muttra and on land which does not belong " to the plaintiff; and no contract or engagement has been made with her on the " subject."

" That the decision of the Collector referred to by the Judge related to Munohur- " pore, and not to the town of Muttra."

" JUDGMENT.—We agree with the Judge in holding that the jurisdiction of the " Civil Courts is not barred in the present case. Both by Act XXI. of 1841, the former, " and Chapter XX. of the Criminal Procedure Code, the present, law defining the " Magistrates' jurisdiction in the matter of local nuisances, he is simply empowerd to " issue an order for the abatement of anything which is there defined to be a nuisance, " after the observance of a certain procedure, and to enforce that order in a certain way; " but there is nothing in either law which confers on the Magistrate the general juris- " diction which is claimed on his behalf by the defendant in the present case, or to " debar the Civil Courts from trying a question of right and title to enjoy certain in- " come in virtue of proprietary right, as claimed in the present suit.

" The pleadings on the merits, both in the Lower and Appellate Courts, raise the " following issues:—

" 1st,—Is the zemindar of a village entitled, as such, to the value of the refuse " sweepings and manure accumulated within the limits of his zemindaree at no " expenditure of money or labor on his part?

" 2nd,—If so, has the plaintiff proved herself to be the proprietor of the whole " town of Muttra, or only 563 beegahs of cultivated land, for which she was assessed " at the Settlement ?

" The Judge has decreed the first issue in favor of the plaintiff, because ' it has " ' been ruled that all items of the Government demand shall be distinctly specified, " ' and the proprietor under engagement with Government is by the Settlement pro- " ' ceedings protected in all the rights of collection, including sewaee collections, what- " ' soever. In para. 142 of the ' Directions for Settlement Officers,' it is ruled with re- " ' gard to sewaee collections that the Government has renounced all these as sources of " ' Revenue to the State. In this case the defendant pleads that the rights of Go- " ' vernment in the town and unproductive portion of Kusbah Muttra have been in " ' abeyance. It rests with the Collector, then, to shew that upon valid grounds he " ' has interfered with a source of income not specifically rendered subject to demand in " ' the Settlement proceedings.' And again, in para. 6th of his order in the application " for review, he observes,—' I never heard of manure being taken into consideration " ' in determining assessment, and I doubt if it is intended that Government should " ' participate in the income from such a source, however valuable.' Further on " he remarks,—' It is clearly in the power of Government to make special enact- " ' ment and to make such provisions at Settlement as may be suitable; but the prin- " ' ciple of a Settlement is to define a limit to the Government claim, and it is not " ' within the competency of any Magistrate or Collector, intermediately during the " ' period of a Settlement, to appropriate the zemindars' income from any source " ' whatever.'

" Now the whole of this argument proceeds on the assumption that a title on the " part of Government to collect this income has been set up in the defence to this " suit; but there is no foundation for this. The Collector has not defended this suit " with the view of securing this source of income for the Imperial Revenue; but the " Magistrate claims a right to collect and employ it for the conservancy and improve- " ment of the town of Muttra. The difference between Imperial and Local Funds is " too well known to require detailed explanation here, and it is sufficient to point out " the mistake into which the Judge has fallen in this part of his argument.

" Under these circumstances we cannot concur with the Judge in holding that " the *onus probandi* was on the defendant; on the contrary, we are of opinion that it " devolves upon the plaintiff to prove right and title in the present case, according to " the ordinary rule of law on the subject.

" Having premised this, we observe that the item sued for comes within the " definition of sewaee collections; and the law regarding these is contained in Sec- " tion 9, Regulation VII. of 1822, and Section 9, Regulation IX. of 1825.

" In the former it is enacted that all cesses and collections not avowed and sanc- " tioned nor taken into account in fixing the Government jumma shall be held illegal " and unauthorized, unless now or hereafter specially sanctioned by Government; and " in the latter, that, after the settlement of any village or mehal shall have been made " in the manner specified in Section 9, Regulation VII. of 1822, the rules and provi- " sions aforesaid shall be applicable to all cesses and collections not sanctioned in the " manner specified in the section. The land of which the plaintiff is zemindar has " been settled under Regulation VII. of 1822, and it is admitted that these collections " were not taken into account in fixing the Government jumma payable by her; it " devolves, therefore, on the plaintiff to prove her right to make them, by shewing that " they were avowed or sanctioned in the Settlement proceedings, as is required by law. " In fact, the issue under consideration resolves itself into a question as to the proper " construction of the paragraph in the Settlement administration-paper filed by both " parties relating to manure.

"A translation of that paragraph is given in the margin, and we are decidedly "of opinion that the claim of the plaintiff to the manure of "the whole town is excluded by its terms. By construing it "in this way, there is no difficulty of construction, and every "sentence of the paragraph aids in conveying its meaning. "By the opposite construction, urged on behalf of the plaintiff, "a portion of the paragraph would have been better omitted. "In our view the use of the first sentence is clear, and the "presence of the word ryots, which includes non-agriculturists in it, and its absence from "the second sentence is very suggestive; while in the other, the first sentence is "mere surplusage, serving only to obscure the meaning of the paragraph; and the "omission of the word 'ryots' in the second paragraph, and the use of the word "khalsah," have no meaning. We are therefore of opinion that the meaning of the "whole paragraph is that the plaintiff's agent, Chumun Lall, shall be at liberty to "dispose of the manure produced by the cultivators of the khalsah lands settled with "him in the manner there described, and by implication that the manure of the "ryots and other cultivators referred to in the first paragraph shall not belong to him.

"Of the refuse and manure produced by the cultivators and ryots, I, Chumun Lall, am the proprietor of that produced by all the cultivators of the khalsah. If the necessity should arise (*waht zaroorut*), I will sell it to the cultivators or to strangers."

"For these reasons we find the first issue against the plaintiff, and thus there is "no necessity for our determining the second.

"We would also observe that the Judge's conclusion, though his judgment is ela- "borate and careful, appears to us to be contrary to his premises; for, if the plaintiff "be the proprietor of the whole town of Muttra, and if her *status* as such entitle her "to the value of the refuse sweepings and the manure of the town, we are aware "of no law by which the Magistrate is entitled to exercise any general interference in "the matter at all, or to deduct the cost of a conservancy establishment from the gross "income. He has of course authority to suppress nuisances, but it is a special, and "not a general, one, and regulated by an exact procedure, as we have explained at the "commencement of this judgment.

"We, in conclusion, remark that the nature of the plaintiff's claim is sufficiently "indicated by the preposterous character of her first plea in appeal.

"For these reasons we decree the defendant's appeal, and dismiss the plaintiff's and "the claim, with costs."

54. The Board make no comments upon Mr. Judge Paterson's decision, as the Sudder Court have noticed the points in which his judgment principally failed.

55. In their last year's Report, the Board noticed that the appeal in the case of Banee Lall *versus* the East India Railway and Government had resulted in favor of Government.

No. 6.—Banee Lall *versus* East India Railway Co. and Government (Collector of Benares).

56. A somewhat similar case has lately been tried by the High Court, Calcutta. The decision is extracted below. It will be seen that the High Court take a much wider view of the rights of Government and of the Railway Company with regard to easements where land has been taken up under Act VI. of 1857 than has been put forward in the case of Banee Lall; but it must be borne in mind that in this latter case the land taken up for the Railway had been taken up prior to the passing of Act VI. of 1857.

The 16th May, 1865.
Collector of 24-Pergunnahs and another (defendants), appellants, *versus*, Nobin Chundra Ghose (plaintiff), respondent.

No right of way can be claimed over land acquired by Government under Act VI. of 1857

Morgan and Sambhunath Pundit, J.J.—"The line of the South Eastern Railway, "passing through the plaintiff's mouzah, has severed about "1,200 beegahs of land from the remaining portion of the "mouzah on the south side of the line. The ryots of the land "so severed live on the southern side of the Railroad, and "before the making of the line they had access by a road "from their dwelling-houses to the land cultivated by them. "This suit is brought against the Railway Company (the

" Government being also made defendant) to procure the removal of obstructions caused " by them, and to establish the right of the plaintiff and his ryots to a road across the " Railway. Both the Lower Courts have decreed in substance the plaintiff's suit, princi- " pally because the Courts find that the plaintiff's ryots have no mode of access to their " lands except by crossing the line, and that their right to pass over the land now occu- " pied by the Railway remains as it was before the Railway was made, notwithstanding " that the land itself has been acquired by the Railway Company. We think the " decision cannot be supported on the grounds. The Railway Company, with the " aid of the Government, acquired the land under the provisions of Act VI. of 1857, " and, by the 8th Section of that Act, the land taken became vested in the Govern- " ment, and afterwards in the Railway Company, absolutely, and free from every " right or interest therein, of whatever description, possessed by the former proprie- " tors or by other persons. All rights before existing, whether of passage or of any " other kind, absolutely ceased upon the acquisition of the land for the Railway, and, " as no right of way afterwards arose or was continued, merely because there re- " mained no mode of access to the lands on the north otherwise than by crossing " the line, the express provisions of the law are not consistent with the existence of " such right.

" In the judgment of the Lower Appellate Court, there is reference to a promise " stated to have been made by the Railway Company, to provide a level crossing at " the place in question; and the Railway map, which is in evidence, shows the trace of " a road there. If the Railway Company have, by their representations and conduct, " laid themselves under a legal obligation to provide a road or crossing, the plaintiff " is entitled to enforce that obligation; and although the present suit is based on a " misconception of his strict rights (which in our view arise, not, as he supposes, from " the continued existence of the old right, but from the acts of the Railway Company " in conferring a new right of way), we think the suit may, nevertheless, proceed for " the purpose of obtaining the relief to which he is really entitled. We must " remand the case, in order that it may be ascertained whether the Railway Company " have, by their conduct or representations, contracted to provide and maintain any, " and what description of, way for the plaintiff and his ryots over the line. If the " Court is satisfied by the evidence that the defendants have so engaged, a decree may " be awarded in the plaintiff's favor."

57. Without venturing to impugn the correctness of the doctrine here laid down, the Board remark that it is not identical with that implied in the following case :—

In this case Parke, B., observed,—" I think the sections in the Act of Parliament " which enable the Company to treat with persons interested " in the land do not apply to persons who have a mere ease- " ment, or right of passage, over the land. All the Company want to purchase are the " lands themselves; and they must treat with those who have an interest in them, " either as tenants-in-fee, for life, or for years, in severalty or in common. The Com- " pany are also bound to make compensation to any person interested in lands, or " having a right of way or easement into or over lands, for any damage he may sustain " in consequence of the works performed by the Company under or by virtue of the " powers of the Act of Parliament; and in this case, if the plaintiff has sustained any " real injury by the division of his land by the railroad, and if they do not put him in " the same situation as he was before, by putting a bridge where the railway is, he " will be entitled to recover full compensation from the Company."

Thicknesse *versus* Lancaster Canal Co.—(4 *Mees and W.*, 472)

" Under a Railway Act which gave power to divert rivers, water-courses, &c., " a Company had raised the level of a brook, into which the " sough of a coal-mine had been accustomed to empty itself, and " thereby caused the water of the brook to flow into the sough, and inundate and stop

Thicknesse *versus* Lancaster Canal Co.—(4 *Mees and W.*, 495.)

" the coal works. Upon the owner of them applying for a *mandamus* for a jury to " *ascertain* and compensate him for the injury done to his works by such diversion of " the brook, which was opposed by the Company on the ground that, on the claimant's " remonstrance, they had restored the brook to its former level, and that no damage " had been done by the alteration (such stoppages having been frequently caused by " floods before), it was held that it was a question for a jury to ascertain whether any " damage had been done to the claimant, and that his alleging that he was injured by " the diverting (*i. e.*, altering the level) of the brook was sufficient to induce the " Court to grant a *mandamus*."—(Regulation V., North Midland Railway Co.,—2 " Railway C. I.) " An action in the case will lie for special damage occasioned to a " party having a right of way over any road interfered with, if another sufficient road " has not been made."—(8 and 9 Vic., c. 20., s. 55.)

No. 7.—Sufat Ahmed Khan *versus* Government (Collector of Ghazeepore).

58. The case of Sufat Ahmed Khan *versus* Government (Collector of Ghazeepoor), which was commented on in the last year's Report, and which had been remanded on appeal for retrial, has again been decided in favor of Government.

No. 8.—Ranee of Jya Nuggur *versus* Government (Collector of Goruckpore).

59. The facts of this case are precisely set forth in the accompanying extract from a letter of the Collector of Goruckpore:—" The Government " granted a nunkar right in Mouzah Durea, valued by Mr. " Reade at Rs. 447, to the Rajah of Sutassee for his lifetime; " but this estimate never received the sanction of the Government, and cannot be held " binding on it. The Rajah transferred his proprietary rights in this village to his " son. The nunkar right was not transferable, and he enjoyed its profits, whatever " they may have been.

" In 1858 the Rajah was punished for rebellion, all his rights were confiscated by " the Government, and, politically speaking, the Rajah ceased to live.

" It is admitted that the Government is entitled on the death of the Rajah to " resume the nunkar allowance.

" The question appears to me to be,—what is the fair amount of this allow- " ance?

" The Ranee argues that Mr. Reade's estimate, *viz.*, Rs. 447 per annum, should " be accepted as the fair amount.

" I, on the part of the Government, contend that Mr. Reade's estimate is not bind- " ing on the Government, as it never received the sanction of Government; on the con- " trary, the Government, in its letter No. 432, dated March 20th, 1840, according its " sanction to the Rajah's holding his nunkar villages rent-free during his lifetime, " directs that in the event of his death the assessment is *not* to take effect without the " previously received sanction of Government.

" Supposing, for the sake of argument, it is admitted that the Government are " bound by the estimate of its Collector,—for what period are they so bound? It seems " to me to be clear that the Government cannot be supposed to be bound by Mr. Reade's " estimate *ad infinitum*. The jumma estimated by Mr. Reade can only be held va- " lid so long as the nunkar right was protected from re-settlement. On the death of " the Rajah the nunkar right was resumable by Government, and its value was as " fairly liable to be re-estimated as is the value of any other resumed rent-free hold- " ing."

60. The Judge has decided against the Government on the following grounds :—

" Council for Government contends that Government has merely resumed its " inherent right, which had been alienated for a time; and, the demand not having

" been sanctioned in so far as Government was concerned, the Collector was author-
" ized to enhance the demand directly the Rajah's rights and interests were attached
" and confiscated; and that there is no valid reason why the assessment fixed in F.S.
" 1268 should not be demanded for F.S. 1265-1268.

" For the plaintiff it is contended that Government, when it confiscated the
" rights and interests of the Rajah, stood in his place, and held the exact position with
" reference to the zemindars that he did; that the sum realizable by the Rajah during
" the term of the Settlement was fixed, and that Government cannot demand more; that,
" in the event of the nankar having been sold, mortgaged, or in any way alienated,
" Government would have been bound by the terms of the contract.

" In my opinion the argument urged for the plaintiff is sound. The rights and
" interests of the Rajah were confiscated. There is no doubt—in fact, it is admitted by
" Counsel for the defendant—that Government would have been bound by any contract
" which the Rajah would have been competent to execute. For the term of his life,
" and subject to the conditions of a future Settlement, he might have alienated his nan-
" kar allowance, and the alienee could not legally be dispossessed.

" It cannot with any show of reason be urged that Government could increase the
" demand upon the zemindars, and yet respect the contract executed by the Rajah.
" Counsel for the defendant, in acknowledging the obligation of Government to res-
" pect a contract made by the Rajah, yields the point contended for by plaintiff's Coun-
" sel.

" The first issue I decree in favor of the plaintiff.

" As regards the second issue, the plea urged by plaintiff's Counsel is untenable.

" The conditions of the present Settlement, by which five-eighths of the Govern-
" ment demand are paid by the zemindars, and three-eighths by the arazeedars, are not
" retrospective.

" In equity, however, had I adjudged Rs. 1,600 to be the sum payable for the
" years F.S. 1265-1268, the plea would, I think, have been a good one.

" With reference to the claim for interest, I think the plaintiff is entitled to in-
" terest at 6 per cent. on Rs. 4,612 from the period she claims it.

" I decree in favor of the plaintiff, with costs."

61. Against this decision an appeal has been preferred on the following grounds :—

" That the Government gave the Rajah of Sutassee, as nankar, the amount assessed
" upon Mouzah Dureea, and resumed it consequent to the rebellious conduct of the
" Rajah; thus Government did not stand in the place of the Rajah—it resumed its rights
" and interests, which were given as a favor. That the Rajah had no authority to
" sell or mortgage the nankar right, which was of a temporary nature; and when
" Government resumed its interests, owing to the disloyalty of the Rajah dur-
" ing his lifetime, the interest of the transferee was considered null and void.
" That the former Settlement was temporary. That, after the term of the Settlement,
" even if the nankar right had not been resumed, Government had the right to revise
" the jumma. The new jumma is Rs. 1,600, to which the Ranee has no objection for
" payment. That the provisional jumma was not ordered to be taken on the resumption
" of the nankar; that the new jumma should have been fixed at the time the Rajah's
" right was confiscated; that the term of the last Settlement expired before the re-
" sumption of the nankar right,—in which case, if Government demanded the new jum-
" ma from the year in which the nankar right was resumed, it was not illegal. The

" Court should take into consideration that the new jumma was fixed at the time the " nankar right was confiscated."

62. The case is still undecided.

63. The Board have no further comments to make on any of the cases to which Government has been a party; but before closing their Report they desire to notice, as it involves a precedent which might seriously affect the working of the Stamp Laws, the accompanying decision of the Sudder Nizamut, regarding which the Commissioner of Stamps addressed them in his No. 129, dated 20th February, 1865.

64. The decision referred to is quoted below. It appeared in the *Agra Law Journal*, No. 6 of Volume II., and there attracted Mr. Johnston's attention :—

Nizamut Adawlut, N.-W. P.
Government *versus* Ram Gopaul, appellant. Crime charged.—For engrossing a deed of gift of an annuity on plain paper. Tried before Mr. W. B. Taylor, Extra Assistant Commissioner of Lullutpore.

BY THE COURT.

Present: { W. EDWARDS, W. ROBERTS, } *Judges.*

A conviction on an admission of an act, which, when committed with the criminal intention of the section of the Indian Penal Code applicable to an offence, is defective if there be no evidence of the criminal intention, and the accused denies the same.

MR. W. ROBERTS.—" This is an application, under Section 404, Criminal Procedure " Code, by a person fined Rs. 40 for engrossing in " favor of Fukeer (Hindoo) a deed of gift of an " annuity on plain paper. The Deputy Commis- " sioner (acting, it would seem, under the Circular " Order of the Stamp Commissioner of the 9th " March, 1864, para. 3) sent the case to a Magis- " trate. That Officer (Extra Assistant Commissioner " of Lullutpore), on receiving the admission of the " prisoner and other accused that the deed was " drawn out by him on plain paper, and that they " were aware that deeds in general were to be drawn " out on stamped paper, treated this as a confession of guilt, and sentenced them to pay " each *Rs.* 40.

" I think this procedure was defective. Evidence of the notification, and that it " was in terms that men of ordinary intelligence must know it extended to deeds of " this sort, and that the parties were not acting in ignorance of the laws, should have " been taken. I would annul the conviction, and direct the Extra Assistant to take " evidence as indicated."

Mr. W. EDWARDS.—" I concur."

65. Mr. Johnston remarked on this :—

" The decision amounts to this,—that three things are necessary to be proved before " a person can be convicted under Section 3 of Act X. of 1862: first, that the " notification (the particular notification is not stated) has been seen by the party; " second, that he possessed ordinary intelligence to understand it when read; and, lastly, " that he executed the deed on plain paper knowing that stamped paper should be " employed.

" Now it will be very difficult to establish the first two conditions; and the last " appears to me to be opposed to one of the first principles of law, namely, that igno- " rance of a law is no sufficient excuse for its infringement.

" If the decision in question is to be considered a precedent in similar cases, there " is hardly a Collector in the provinces who will undertake the prosecution of an " offender against the Stamp Law.

66. " On the receipt of this letter, I was directed to communicate with the " Registrar of the Sudder Court, in view to the reconsideration of this case by the full " Bench.

67. " The Board observed that ' the decision in question, if acted upon, would " ' establish a very dangerous precedent, and, as it involves an important principle, they " ' are desirous it should have the consideration of the full Bench,' to which I am to re- " quest the case may be submitted."

The Board make this application on the following grounds:—

"The decision of Judges Edwards and Roberts appears entirely to ignore the "well-known maxim '*Ignorantia juris quod quis que scire tenetur neminem excusat.*" "Referring to this maxim in its application to Criminal Law, an accepted authority "remarks,—'A mistake in point of law which every person of discretion not only may "'*but is bound and presumed to know affords, in criminal cases, no sort of defence*, so that "'when an offender is arraigned at the bar of justice, a plea that he has mistaken the "'law, however much, if proved, it might operate in mitigation of punishment, is one "'which the Court will not be at liberty to entertain.'

"With reference to the second paragraph of the decision impugned, I am directed "to observe that the Board are not aware of the existence of any notification of which "proved cognizance is indispensable to render a person liable to the penalty pre- "scribed by Section 3 of Act X. of 1862.

"In this particular case, moreover, it appears clear that the accused was aware "of the existence of a Stamp Law: he acknowledged he was aware that deeds in "general were to be drawn out on stamp paper. It rested with him to acquire a more "particular knowledge of the details of the law.

"I am to add that the Board would not presume to criticise any decision of the "Court, but, as conservators of the Stamp Revenue, they feel in duty bound to urge "on the Court's consideration the very serious injury to that revenue that would "certainly be occasioned if the decision in question were to become an established "precedent."

68. In reply, the Register of the Sudder Court has written the following letter:—

"From J. D. SANDFORD, Esq., Officiating Register, Nizamut Adawlut, North-Western "Provinces, Agra, to W. CHICHELE PLOWDEN, Esq., Secretary, Sudder Board of "Revenue, North-Provinces, Allahabad (No. 979 of 1865).—Dated Agra, the "28th July, 1865.

N. A., N. W. P.

Present:
A. ROSS, Esq.,
W. EDWARDS, Esq.,
W. ROBERTS, Esq.,
F. B. PEARSON, Esq.,
} *Judges.*

"SIR,—I am directed to acknowledge the receipt of your letter No. 5, of the "3rd March last, in which the Board suggest a reconsideration by a full Bench of the "decision passed by Messrs. Edwards and Roberts, on revision of the sentence of the "Extra Assistant Commissioner of Lullutpore, fining one Ram Gopal for a breach of the "Stamp Laws.

2. "In reply, I am directed to say that the decision has been considered by the "whole Court.

3. "As there is some difference of opinion between Messrs. Ross, Edwards, and "Roberts on the one hand, and Mr. Pearson on the other, I am instructed to give "the respective opinions of the majority, and of their colleague who dissents.

4. "The majority of the Court fully admit the rule that ignorance of the law in "criminal cases is not a good defence to the charge of transgressing the law: Section 79 "of the Indian Penal Code recognises this doctrine.

5. "But an act prohibited by law may be shown to be excusable and justifiable, "in which case the law would not employ a criminal intent.

6. "And ignorance of the law would be excusable, when an act formerly in- "nocent had been recently made criminal, if the party accused had been misled by "the persons administering the laws; or it would be regarded as an extenuation if there "were anything to show that the accused was so situated as not to be on the same foot- "ing as the rest of the community.

7. "It appeared to the Judges before whom the case came that all its peculiari- "ties had not been taken into consideration, the deed having been executed in the lat-

" ter part of 1861, and in a province not subject to the general regulations. The Judges " also considered that, as in his question to the prisoner the Magistrate referred to the " notification as rebutting the defence, he should have set out the particulars on his pro- " ceedings as to the time and terms of the same."

8. " The majority observe that the principle of the maxim quoted by the Board " could not be rigidly applied in the case of the Stamp Law (Act X. of 1862). That " law, they observe, in the provisions contained in Sections 15 and 17, clearly recognises " the distinction between wilful evasion and accidental or unavoidable evasion of the " enactment; and as it provides in the second of these cases for the infliction, and in the " last for the remission, of certain penalties, after which validity may be given to a deed " otherwise invalid by the affixing of the proper stamp, it appears to the majority of the " Court to be clear that the prosecution under Section 52, with the view of inflicting the " punishment provided by Section 3, can only be intended to be undertaken in cases in " which the relief provided by Sections 15 or 17 has either been refused or not applied " for; and then the issue of the accused person's wilful commission of the offence would " have to be determined. Under these circumstances it would, in the opinion of the " majority, be wrong to treat the admission of the act as an admission of the offence.

9. " And, though the presumption is against the person committing the unlawful " act, yet the circumstances excusing, justifying, or extenuating the actshould be taken " into consideration by the Magistrate in trying a charge of infringement of the law.

10. " It was because the accused appeared to be prejudiced by the summary pro- " ceedings in the case that a re-trial was ordered.

11. " Mr. Pearson, however, observes that, under Section 37, Act XXXVI. of 1860, " the power of prosecution rested generally with the Collector of Stamp Revenue, who " might exercise his discretion in forbearing to prosecute in cases in which the Act had been " contravened from mistake, accident, ignorance, inadvertence, or from other unavoidable " cause (Section 13). But Mr. Pearson is of opinion that the terms of Section 3 of the " enactment are unconditional, and that persons contravening the Act from any of the " causes above mentioned are not exempted from prosecution or punishment. The Ma- " gistrate, in awarding punishment, would of course deal leniently with cases in which " such causes were found to have operated; but those causes would not justify the con- " travention, and an admission of the contravention would be an admission of the offence " rendered punishable.

12. " It does not appear to Mr. Pearson that any local notification of the Act is " required before it can be enforced. In the case which has given rise to this discussion, " he remarks that the accused admitted the notification of the Act and his knowledge " thereof; his plea of ignorance of the particular provisions of the Act, relating to a " particular class of deeds, was inadmissible. Mr. Pearson observes that in Section 15, " Act X. of 1862, absence of intention to evade payment of Stamp Duty is made a ground " for allowing a deed to be registered on payment of a penalty; and urgent necessity or " unavoidable accident, a ground for remitting the penalty; and he conceives that in " cases in which the Collector admitted the deed to be registered, or remitted the penalty, " that officer would hardly institute criminal proceedings under Section 52. But he does " not think that the Magistrate is bound to prove local notification of the Act, or know- " ledge of its enactment or provisions by the accused, before he can punish under Section 3.

13. " From these remarks it will be apparent that Mr. Pearson alone differs " from his colleagues in holding that intention to evade the law, or ignorance thereof, are " pleas only available legally for mitigation of punishment—not to bar prosecution or " punishment altogether."

69. This, the Board conceive, though the opinion of the minority, to be consistent with the principles of the Common Law, and to be specially applicable in cases of evasion of the Revenue Laws.

70. The Board's letter has already explained the grounds on which they, as guardians of the Stamp Revenue, object to this decision. It will be seen from the judgment of the Court that the Magistrate's decision has been annulled, on the ground that the procedure was defective; that evidence of the notification (allowing the application of Act X. of 1862 to the Jhansie Division), and that it was in terms that men of ordinary intelligence must know it extended to deeds of this sort, and that the parties were not acting in ignorance of the law, should have been taken.

71. The Board contend that this doctrine is both novel and erroneous. As Sir W. Blackstone observed,—"A mistake in point of law which every person of discre-" tion not only may but is bound and presumed to know is in criminal cases no sort of " defence. '*Ignorantia juris quod quis que tenetur scire neminem excusat*' is as well the " maxim of our own law as it was of the Roman." It has ever been held that it is no defence for a foreigner, charged with a crime committed in England, that he did not know he was doing wrong—the act not being criminal in his own country.

72. Ignorance may be a valid plea for mitigation of punishment, but it is no ground for quashing a conviction. This is peculiarly the case in the application of the Revenue Laws, and, in regard to the mere *mala prohibita* as distinct from *mala in se*, Broome, writing on this subject, aptly observes,—" Our Criminal Law, whether common " or dependent upon statute, is inoperative with reference to the conduct of individuals; " so that as will immediately be seen, if a statute forbids or commands a thing to be " done, all acts or omissions contrary to the prohibition or command of the statute are " offences at Common Law, and ordinarily indictable as such. In support of what has " been just said, and as illustrating the rule that whenever the law positively forbids a " thing to be done it becomes thereupon *ipso facto* illegal to do it, may be mentioned " 'Regulation V., Woodrow,' where it was held under a penal statute (5 and 6 Vict., " c. 93, s. 3) that a dealer in tobacco having in his possession adulterated tobacco, " although ignorant of its adulteration, is liable to the penalties imposed by that " Act." It may be conceded, indeed, that the laws for the protection of the Revenue are in some respects peculiar; yet the case cited seems clearly to illustrate the proposition above stated.

I have the honor to be,
Sir,
Your most obedient Servant,
W. CHICHELE PLOWDEN,
Secretary, Board of Revenue,
North-Western Provinces.

No. 214A. of 1865.

From

R. SIMSON, Esquire,

Secretary to Government,
North-Western Provinces,

To

W. CHICHELE PLOWDEN, Esquire,

Secretary, Board of Revenue,
North-Western Provinces.

Dated Allahabad, the 31st October, 1865.

Sir,

Judicial Dept. (Civil.)

I am directed to acknowledge the receipt of your letter No. 657, dated the 28th ultimo, in which the Board of Revenue report, in their capacity of Legal Remem-

braneers, on the litigation to which Government has been a party during the year 1864-65.

2. In reply, I am to express the regret of the Lieutenant-Governor at the delay which has occurred in the submission of this Report, and to remark that, though those Collectors in the Rohilcund and Benares Divisions who delayed their reports—and especially the Collector of Ghazeepore—are censurable, the primary responsibility rests with the Commissioners, whose duty it is to see that Collectors do not unduly delay the submission of periodical returns.

3. With reference to the first* case remarked upon by the Board as being of special interest, it is observed that the Board take exception to the extra-judicial action of the Judge of Seharunpore, who instructed the Collector of that district, against whom a claim for Rs. 515-10-7 (the value of the personal property of a Mr. Dalby, sold and credited to Government) had been made, to abstain from all action in the case pending the result of a reference made to Government. The Board observe that, if the case had been reported to them, the proceeding would probably have been stopped in the very commencement. The remarks on this case, however, appear to have been made without a full knowledge of the facts. The money sued for had been credited to Government on the recommendation of the Judge himself. Owing to circumstances which were not foreseen when that recommendation was made, it became necessary to appropriate it to the satisfaction of an admitted claim which it had been expected would be satisfied from other property left by Mr. Dalby. Had the matter been represented to the Judge by simple petition, instead of a formal plaint, his course would have been quite regular, as it was probably the most effectual way of stopping the suit.

* Mrs. Butterfield *versus* Government (Collector of Seharunpore).

4. Regarding case No. 6,† I am to remark that the suit recently decided in the High Court at Calcutta is not exactly in point, because the case of interrupted drainage depends, not on the question of property, but upon the principle that you must so use your own right as not to injure that of your neighbour; and the land having been taken by Government and transferred to the Railway, it was culpable negligence on their part to raise an embankment without giving the necessary culvert for carrying off the drainage.

† Banee Lall *versus* East Indian Railway Company and Government (Collector of Benares).

5. Moreover, it does not appear that, because the Judges dismissed the claim to exercise a right of way across the Railway, they would deny the title to compensation for the injury that might have been sustained by deprivation of any right formerly enjoyed. It may be a question what limit of time there is on the preferment of the claim to compensation, but that the claim can be sustained is open to none. It is provided by Section 24 of Act II. of 1857 that, when land is taken under the Act, the amount of compensation to be awarded shall include any damage which may be sustained by any of the persons interested therein in respect of any adjoining land held therewith. If the damage sustained arises necessarily out of the simple appropriation of a strip of land, the claim will probably be advanced at the time that the question of compensation is considered, and be satisfied by Government; if it arise out of the use made of the land by the Company after its transfer to them, the Company appear properly liable for the consequences of their acts.

6. His Honor concurs in the remarks of the Board on the judgment of the Sudder Court in the case of Government *versus* Ram Gopal, appellant, and referred to in the 63rd and following paragraphs of your letter. There were perhaps extenuating circumstances in this particular case which justified mitigation, if not complete remission, of punishment; but His Honor is compelled to doubt the correctness of the principles assumed in the arguments adduced by the majority of the Court to justify the release of the prisoner. The law does not permit ignorance to be pleaded as a valid excuse for an infraction of its provisions, and it is therefore erroneous to hold that the breach of a fiscal law cannot be punished unless it is proved by evidence that its pro-

visions have been notified so that all are aware of them, and that the person charged with its infraction was aware that he was offending.

I have the honor to be,

SIR,

Your most obedient Servant,

R. SIMSON,

Secretary to Government,

North-Western Provinces.

No. 517.

FROM

W. CHICHELE PLOWDEN, ESQUIRE,

Secretary to the Board of Revenue,

North-Western Provinces,

To

R. SIMSON, ESQUIRE,

Secretary to Government,

North-Western Provinces.

DATED ALLAHABAD, THE 28TH AUGUST, 1866.

SIR,

REVENUE.

Present:
C. B. THORNHILL, Esq., C.S.I., *Senior Member;*
and
R. N. CUST, Esq., *Junior Member.*

I am directed to submit, for the information of His Honor the Lieutenant-Governor, the Report of the Board of Revenue, in their capacity of Legal Remembrancers, on the litigation in the Civil Courts to which Government has been a party for the year 1865-66.

2. Every endeavour has been made to prevent the recurrence of the delay commented on in the 2nd para. of last year's Report, and, although the Board are able to forward the present Report at a somewhat earlier date, they have still to complain of unpunctual submission of some of the divisional returns. The dates of their receipt are shewn in the margin. The earliest was that of the Commissioner of Meerut, which was received on the 11th June. The latest was that of the Rohilcund Division, which only reached on the 13th instant.

Meerut Division,	11th	June,	1866.
Agra	„	4th July,	„
Rohilcund	„	13th Aug.,	„
Allahabad	„	25th June,	„
Benares	„	30th July,	„

3. The total number of suits in which Government was concerned during the year under report was 344, being an increase of 91 over the number shewn in the Report for the previous year. This increase exactly equals the number of cases which remained pending at the close of 1864-65, and which have been brought forward and included in the suits of 1865-66.

No. and classification of suits.

4. The annexed statement exhibits the manner in which the suits have been classified and disposed of. The initial letters in the 1st column shew respectively the cases of the several descriptions decided "for Government," the cases "pending," those decided "against Government," and those "compromised," for each division separately.

5. The subjoined table, which is in the same form as that embodied in the Report for 1864-65, shews the total comparative results for the year under review and the year preceding :—

	Government, Plaintiff.									*Government, Defendant.*								
	Pending at the commencement of the year.	Instituted during the year.	Total.	Decided in favor of Government.	Decided against Government.	Compromised.	Total number decided.	Percentage of decisions in favor of Government.	Percentage of decisions against Government.	Pending at commencement of the year.	Instituted during the year.	Total.	Decided in favor of Government.	Decided against Government.	Compromised.	Total number decided.	Percentage of decisions in favor of Government.	Percentage of decisions against Government.
1865-66.																		
Original Suits, ...	5	9	14	7	2	0	9	77·8	22·2	44	124	168	59	46	17	122	47·5	37·7
Regular Appeals,	8	11	19	6	7	3	16	37·5	43·8	13	33	46	26	3	0	29	89·7	10·3
Special Appeals,	1	1	2	1	0	0	1	100·	0	2	12	14	7	0	0	7	100·	0
Miscellaneous Applications, ...	14	39	53	36	4	0	40	90·	10·	4	24	28	15	5	0	20	75·	25·
TOTAL, ...	28	60	88	50	13	3	66	75·7	19·7	63	193	256	107	54	17	178	60·1	30·3
1864-65.																		
Original Suits, ...	9	13	22	13	4	0	17	76·5	23·5	37	99	136	51	40	0	91	56·	44·
Regular Appeals,	1	10	11	2	1	0	3	66·7	33·3	19	15	34	18	4	0	22	81·8	18·2
Special Appeals,	1	2	3	0	1	0	1	0	100·	7	2	9	6	0	0	6	100·	0
Miscellaneous Applications, ...	5	22	27	10	3	0	13	76·9	23·1	10	1	11	6	1	0	7	85·7	14·3
TOTAL, ...	16	47	63	25	9	0	34	73·5	26·5	73	117	190	81	45	0	126	64·2	35·8

6. Of the 344 cases of 1865-66 accounted for in the above table, 253 were instituted during the year. Of these, 133 were original suits, 44 were regular appeals, 13 were special appeals, and 63 miscellaneous applications. Omitting the miscellaneous applications, which were 39 in number, initiatory action on the part of Government was taken in only 21 cases, of which 12 were appeals.

Increase or decrease in litigation.

7. Notwithstanding a slight diminution in the number of suits and appeals instituted by Government, there has been a decided increase in the amount of litigation in which Government was interested during 1865-66, as compared with 1864-65. The increase cannot now be said to be nominal, for, as all suits were reported to the Board in the previous year, so have they been in the year under report. The original suits brought against Government were more than one-fourth in excess of the number instituted in 1864-65, and the number of appeals was more than doubled.

Results in favor of or against Government.

8. The general results do not betoken any marked improvement this year. In some respects they are perhaps even less favorable than in 1864-65.

9. As regards suits instituted by Government, the percentage of decisions in favor of Government is somewhat better than in the past year, being 75·7 against 73·5; but the percentage of cases in which Government was defendant has fallen from 64·2 to 60·1.

10. The following table shews the percentage of decisions in favor of Government in the year under report and the two preceding years :—

	1865-66.	1864-65.	1863-64.
Original Suits, ...	50·4	58·18	74·6
Regular Appeals, ...	71·1	80·	88·2
Special Appeals, ...	100·	85·7	85·7
Miscellaneous Applications, ...	85·	76·7	100·

11. The falling off in the percentage of original suits decided in favor of Government, noticed in paras. 13 and 14 of last year's Report, is still more perceptible in 1865-66. This unsatisfactory result is due entirely to the character of the decisions in the Civil Courts of the Bareilly District. Out of 48 original suits decided against Government, no less than 31 were so decided in the Courts of the Bareilly Judgeship.

12. There has also been a very noticeable falling off in the proportion of regular appeals decided for Government; but this is to some extent compensated by the entirely successful issue of the special appeals.

13. The results of the miscellaneous applications are much more satisfactory than in the previous year.

14. The following are the details of the classification of suits in which Government was interested :—

Character of litigation, and its results

15. The cases resulting from confiscations for rebellion were 37, of which 20 were decided in favor of, and 5 against, Government; 12 remained pending; none were compromised. The cases of this class have greatly diminished, and in time must become extinct.

16. The suits to contest awards of the Revenue and Magisterial Authorities, which have increased from 69 in 1864-65 to 141 in 1865-66, are thus accounted for,—58 were decided in favor of, and 36 against, Government; 7 were compromised, and 40 were pending at the close of the year. It is remarkable that, of the 36 cases of this class in which the decisions were against Government, no less than 27 belonged to the Bareilly Judgeship.

17. There were 54 suits arising out of proceedings connected with escheats or relating to the exchequer. Of these, 24 were decided in favor of, and 8 against, Government; 6 were compromised, and 16 remained on the file at the end of the year.

18. Nine suits were for breach of contract: 7 resulted in favor of Government, one was compromised, and one had not been disposed of.

19. 35 suits were brought by or against the Court of Wards: 12 were decided for, and 11 against, the Court; 5 were compromised, and 7 were pending when the year closed. Of the whole number of suits appertaining to this class, no less than 25 were of the Benares Division.

20. Last year the greatest amount of litigation was in the Benares Division. This year, although the number of suits in that division has increased considerably, the Rohilcund returns exhibit the largest number of cases. The litigation was least in the Agra Division, while in Meerut and Allahabad it was nearly equal.

Amount of litigation in each division.

21. The number of suits pertaining to each division of the North-Western Provinces is noted below :—

Rohilcund,	...	...	...	100	cases.
Benares,	...	...	...	95	,,
Allahabad,	...	...	...	58	,,
Meerut,	...	...	...	55	,,
Agra,	...	...	...	36	,,

It will be observed that the number of suits in Rohilcund has doubled, but the cause of this great accession is unexplained. It is, however, worthy of notice that more than two-thirds of the whole number of suits in this division were brought to set aside the awards of Government officials.

22. The entire absence of all suits by or against Government in the Jhansie and Kumaon Divisions, as well as in Ajmere, has again to be remarked.

Character of litigation in each division.

23. The variations in the character of the litigation in the several divisions may be thus described :—

24. In Benares, as in last year, the mass of suits had reference to awards of Revenue and Magisterial Officers, and to the Court of Wards. There was a slight diminution in the number of cases of the latter class, being 25, against 32 in the previous year; but suits of the former description increased from 30 to 52. There were only two suits relating to confiscation for rebellion, and 11 connected with escheats and exchequer proceedings.

25. In Rohilcund, the suits to set aside confiscations decreased from 39 in 1864-65 to 19 in 1865-66; the suits to contest the orders of Government Officers were no less than 41; there were 10 suits relating to escheats, and 5 to breaches of contract; but only one which had reference to the Court of Wards.

26. In Meerut there were five cases arising out of confiscations, 11 against the awards of the Magisterial and Revenue Authorities, 10 relating to escheats, and two to breaches of contract. There were also two suits connected with the Court of Wards.

27. In Agra there were no confiscation suits. Nearly one-half the entire number of cases—*viz.*, 16—were instituted to contest the orders of Government Officers. There were 13 escheat and exchequer cases, one of breach of contract, and three appertaining to the Court of Wards.

28. In Allahabad, 11 suits were for revocation of confiscation awards, 21 against orders of the Magisterial and Revenue Officers, 10 had reference to escheats, one was for breach of contract, and four related to the Court of Wards.

Memorandum of costs.

29. The following memorandum exhibits the amount of costs incurred, awarded, and recovered during the year :—

Division.	Incurred.			Awarded.			Recovered.		
	Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.
Meerut, ...	3,828	15	5	3,637	3	8	2,085	1	5
Agra, ...	4,825	0	3	2,409	13	6	683	7	3
Rohilcund, ...	2,607	10	7	869	9	5	326	2	7
Allahabad, ...	2,293	11	0	6,902	9	7	1,464	13	2
Benares, ...	11,494	0	3	5,516	0	7	3,093	9	5
TOTAL, ...	25,049	5	6	19,335	4	9	7,651	1	10

30. The amount awarded, as shewn above, contrasts favorably with that entered in the corresponding memorandum for 1864-65.

31. The following cases may be specially brought to notice, as interesting either on account of their facts or the points of law raised therein :—

1.—Mussumat Khanzadee versus Collector of Boolundshuhur.

32. This suit formed the subject of a Special Report to Government in my letter No. 483, dated 14th of this month, and it is unnecessary, therefore, to dwell upon it here at length.

33. The action was brought to enforce a decree of the Court of Special Commission established under Act IX. of 1859, which declared the plaintiff entitled to maintenance, by assignment to her of a portion of her brother's confiscated estate. The decree itself was of very doubtful regularity, and the irregularity was increased by the action of the Local Officers in putting her in possession of an estate nearly double in value to that to which she was entitled under the decree. On the error being discovered, the lady was ousted by order of Government, and litigation has ensued, by reason

of her upholding her right to the original assignment, and refusing to accept the second selection. The Judge decreed in favor of Government in March last, but his decree was reversed in regular appeal to the High Court, who, in the course of their judgment, have laid down that the Board's sanction to an assignment of land is final and authoritative, and conclusively binding upon Government, and are unable to draw a distinction between the acts of the Board—which, in assignments of land, have always been considered conditional on the sanction of Government—and the acts of Government, which alone contain any authority for grants of land.

34. This was a suit brought in the Court of the Deputy Commissioner of Hissar to recover the amount of debt due on a bond executed by the late Mr. Skinner in favor of the plaintiff. The estate has passed into the Court of Wards, and hence the Collector was sued.

2.—Manuck Chund, mahajun, *versus* Collector of Boolundshuhur, Executor of the late Mr. T. Skinner.

35. The claim was never disputed, but had been registered for adjustment with other claims. The suit is only remarkable because,—although, as the bond was executed at Belaspore, in the Meerut Division, and registered at Boolundshuhur, and the money was paid at Belaspore, the cause of action arose in the North-Western Provinces; and although, as the deceased Mr. Skinner resided at Belaspore, the suit was not cognizable by the Deputy Commissioner of Hissar (Section 5, Act VIII. of 1859),—yet jurisdiction was usurped by the Punjab Court.

36. The summons fixing the 1st April, 1866, for the hearing of the suit was not served on the Collector till the last day of March, who therefore had no opportunity of referring to Government, under Section 69, Act VIII. of 1859, or of applying for a postponement of the case. The Deputy Commissioner gave an *ex-parte* decree in favor of the plaintiff.

37. Notwithstanding that the claim is good, the Board considered that it would be a bad precedent to allow the Punjab Courts to assume jurisdiction, or to acquiesce in a judgment summarily passed in the enforced absence of the Collector. They have therefore directed that a qualified agent be sent to Delhi, to conduct the appeal before the Commissioner.

38. The result of the appeal will be reported.

39. As anticipated in the 37th paragraph of last year's Report, the result of the suit noted in the margin was in favor of Government.

3.—Sahoo Ram Narain *versus* Government (Collector of Moradabad).

40. This case is noted in the 38th—40th paragraphs of the Report for last year. It is still pending in the Judge's Court. The plaintiff sought to obtain compensation for the materials of a house knocked down in the mutinies for strategical purposes. Their claim was dismissed by the Principal Sudder Ameen, and they have appealed to the Judge, who has introducted a new claim into the suit, *viz.*, on account of the value of the site on which the house stood,—thus determining for adjudication a point not raised in the memorandum of appeal as preferred before him. The site was confiscated, and therefore the issue of the suit should not be doubtful; but the proceeding of the Judge is unusual.

4.—Mussumat Goomtee and others *versus* Government.

41. This suit, and 25 others of which the circumstances are similar, have been decided against Government by the Judge of Bareilly, and have contributed mainly to the unfavorable percentage of suits decided for Government, as commented upon in my 11th and 16th paragraphs. The suits are brought to set aside the order of Government sanctioning the sale of certain nuzool houses and shops in the town of Pillibheet. The history of these buildings was reported to Government by Mr. A. C. Lyall, Joint Magistrate, in August, 1860. They

5.—Ghasee Ram *versus* Collector of Bareilly.

were built in the time of native rule, and were intended for the accommodation of the Officers of State and attendants at Court. On the accession of British rule, the old occupants were allowed to remain, without any demand of rent, on the understanding that they were liable to dispossession at the pleasure of Government. The houses, gradually passed into the occupation of others, whose position as servants of Government, or whose accidental circumstances, enabled them to take possession. In 1817 enquiry was made into the tenure, and the value and situation was registered, with the names of occupants who were left in possession, on the understanding that the property was nuzool. In 1841 it was again registered as nuzool. In 1858 the Hon'ble R. Drummond contemplated report to Government, which was prevented by his transfer to another district; so it was not till 1860 that a practical assertion of the rights of Government was made, which resulted in the orders of the Lieutenant-Governor No. 2083A., dated 12th August, 1861, directing sale to present occupants, or, on their refusal, sale by auction. These orders have provoked the pending litigation. The Board directed that the suits should be defended by pleading the fact that the British Government succeeded to the property of the Government which preceded it; that the property has been regularly registered as nuzool; that the possession of the occupants was on mere sufferance: that the rights of Government are not barred by less than 60 years' adverse possession: that, on the other hand, the rights of the plaintiffs, which should have been asserted when the property was registered as nuzool, were barred by the statute of limitation.

42. The Judge, however, set aside the orders of Government issued in 1861, and directed that Government must establish its right to the property by a regular suit in the Civil Court, on the ground that the occupants are in apparent proprietary possession.

43. The Board have sanctioned appeal to the High Court, on the ground that the finding of the Judge is opposed to law and to the facts of the case, on the following points:—

(1.) Possession of the occupants has been under the permission of the Government, and has not been of such a nature as to confer a proprietary title on them,—the Government never having relinquished its right to these properties, as is shown by the fact that they were in 1817, and again in 1841, recorded as nuzool.

(2.) That these properties having been entered as nuzool property in the statements prepared in 1817 and 1841, the claim now brought forward by the plaintiffs is barred by the statute of limitation.

44. The result of the appeal will be duly reported to Government.

6.—Soobrun, Aheer, *versus* Government (Collector of Cawnpore).

45. This was a suit to dispute the right to a plot of land in the City of Cawnpore, made over in 1862 to the Municipal Committee with other nuzool lands. The action arose from an order of the Municipal Commissioners preventing the plaintiff from building on the land; and the question brought before the Board was, whether Municipal Commissioners appointed under Act XXVI. of 1850 are liable to be sued in their own persons or as a corporation, for their own acts, or whether they are to be held to act officially and as the representative of Government, so that Government becomes responsible for their actions.

46. The Board were inclined to the opinion that the municipal body is an official one, and that Government should be made a party to all suits brought against the Committee, except such as may arise from the personal misconduct of a Commissioner.

47. For it seemed to the Board, looking at the constitution of the majority of municipal bodies of which the Magistrate must by law be a member, and of which he is generally the most active and influential member, to be very undesirable that the Committee should be allowed to exercise such powers as the presence of the highest official

in the district confers without involving the Government in the responsibility entailed by their acts.

48. And further, the Act entrusts the execution of certain orders passed by the Commissioners to the Magistrate: the latter seems to be regarded as the executive, the former as a deliberative, body.

49. And the 8th Section of the Act regards monies collected by the Committee as at the credit of Government.

50. Apart, however, from the question as to the position of the Municipal body, there were other grounds upon which it seemed advisable that the Collector should defend the suit. The land had been made over to the Municipality as nuzool. Now, nuzool land was made over by Regulation XIX. of 1810 to the management of Local Agents, who in the first instance were to be always servants of Government. This restriction was afterwards so far modified by Act XXXVIII. of 1837 that any person might be made a Local Agent; but the law which required the Collector to be always one of the Local Agents remained unchanged; and Section 15, Regulation XIX. of 1810, expressly provides for the Local Agents being sued in the same manner as Government or public Officers.

51. In transferring the nuzool property of the State to the Municipal Commissioners at Cawnpore, the Government did not, in the Board's opinion, intend, even if it were legal for it to do so, to divest itself of the responsibility so expressly declared by the Regulation.

52. The Board therefore instructed the Collector to defend the suit on the part of Government so far as the title to the land is concerned.

53. The case noted in the margin is the subject of paragraphs 43—46 of last year's Report. As there stated, the object of the suit was to contest an order of Government awarding the confiscated estate of a rebel to another. The plaintiffs' contention was, that by the terms of Settlement they, as members of the village community, had a right of pre-emption in the property, and that, although they offered to purchase, their offer was disregarded, and the village made over to a third party. The defence of Government was that no sale took place, and that therefore the rights of pre-emption could not be exercised; and that the conditions of the Settlement-paper did not apply in consequence of the confiscation. In the Sudder Ameen's Court, decree was given in favor of Government; but this decision was reversed in the Judge's Court, and a special appeal, preferred on behalf of Government, has been dismissed in the High Court. The plaintiffs therefore obtain possession of the estate on payment of the sum given in by the assignee of Government.

7.—Syud Yad Ali and another *versus* Government (Collector of Futtehpore).

54. It appears that the estate was made over to the Government assignee on payment by her of a sum fixed by the Collector: and therefore the plea that no sale took place could not be supported. Still, however, it might be argued on behalf of Government that the stipulations of the Settlement-paper became absolutely void by confiscation; that Government did not, as ruled by the High Court, acquire by confiscation the rebel's share in the same condition in which the latter held it before his conviction; but that it re-entered upon the land free from all encumbrances and conditions, which merely effected the relations between the members of the village community; and, lastly, that all rights in confiscated property not advanced within one year from the date of attachment were barred by the limitation clause of Act IX. of 1859.

55. However, as the decision of the High Court is final, nothing remains to be done. The decision will rule another case in the same district, of which the circumstances are similar, which had formerly been decided in favor of Government, but which has now been

8.—Mukdoom Bebee *versus* Government (Collector of Futtehpore).

appealed to the High Court on news being received of the judgment in the case of Yad Ali. The Board have directed no defence to be made on behalf of Government.

56. An important case, and one that may appropriately be next mentioned, was decided in favor of Government by the late Sudder Court in November last, and will be found printed at pages 191—192 of the printed "Reports of Selected Cases" for that month.

9.—Sheonath and Goordeen *versus* Collector of Cawnpore.

57. The property in suit was confiscated by Government as belonging to Rajah Suttee Pershad. On an application being made to purchase the property, the plaintiffs objected that the rights and interests of the Rajah therein were merely those of a mortgagee; that these rights alone were vested in Government by the sentence of confiscation; and that they therefore were entitled to a declaration of the proprietary right and the title to redeem. The defence of Government was to the effect that the claim was barred by Section 20, Act IX. of 1859, because the estate was confiscated as the sole property of the Rajah, and was taken possession of by Government, not as representatives of a mortgagee, but in full proprietary right; and that therefore any adverse claims that might have existed were definitely extinguished on the expiry of the period limited by the law for their cognizance, *viz.*, one year from the date of seizure. The Court accepted this plea, and ruled broadly that when the Officers of Government have seized an estate as liable to forfeiture under the penal Acts of 1857, 1858, and 1859, a suit of parties other than the alleged offender to claim a right therein must, under Section 20, Act IX. of 1859, be brought within one year from the date of seizure.

58. It may be difficult to reconcile this decision with that in the case of Syud Yad Ali.

59. The case noted in the margin was described in the 59th—62nd paragraphs of last year's Report. The Sudder Court admitted the pleas advanced by Government in appeal, and a copy of their judgment is transcribed:—

10.—Collector of Gorruckpore, on the part of Government, appellant, *versus* Rance of Jyanuggur.

60. "After hearing the arguments of Counsel and examination of the record, we "come to the conclusion that the Judge's decision is open to the objections taken by "the appellant.

"We observe that,—though Mr. Reade, the Settlement Officer, recommended the "Government to give to the Rajah of Suttasee, as nankar, or maintenance, the sum of "Rs. 447 per annum, which he estimated as the sacrifice made by the State in allowing the Rajah to hold the mouzah without payment of Revenue; and though the "Lieutenant-Governor sanctioned the continuance to the Rajah of his nankar villages "during his lifetime,—the 4th para. of the Government letter to the address of the "Sudder Board of Revenue expressly stipulates that the assessment is not to take "effect without previously receiving sanction. In other words, the proposed assessment, "so far from being sanctioned for the term of the Settlement, was expressly left open "to be reconsidered and modified when the time might come for resuming the rent-"free grant. In 1858 all the rights and interests of the Rajah were confiscated for "disloyalty and active participation in the rebellion. It was then clearly within the "power of Government to reassess the estate, as it had never sanctioned the assessment originally proposed by Mr. Reade. The Government demand had been waived, "in consideration of the poverty and embarrassments of the Rajah. He had no title "whatever to hold his estates rent-free, but did so by the grace and favor of Government.

"After the attachment of the Rajah's estates, it appeared that he had, prior to "the mutiny, sold this estate to his son, and that he had not been in possession when "the confiscation took place. The Government restored the property, and directed "that, after deduction of the State's demand, all sums realized from the estate during "the period of attachment should be made over to the plaintiff. But it did not follow

" that the plaintiff, who is mortgagee on the part of the Rajah's son (who is his son-
" in-law), was to hold her estates on the same terms as the Rajah did, who was allowed
" to hold them rent-free as an act of grace, and under no other pretext. It is a mis-
" take to suppose that the Government was bound, on resuming the grant, to adopt
" Mr. Read's former estimate, and to fix the assessment at Rs. 447 till the end of the
" existing Settlement, and that it could not demand more; for, as shown above, the
" Government had expressly reserved sanction of the proposed assessment during the
" lifetime of the Rajah. It is true, no doubt, that as long as the Rajah lived, sup-
" posing that his estates had never been confiscated, he could have been allowed to
" hold them rent-free, and a mortgage or transferee would have been permitted to
" retain them on the same terms. But this would have been allowed as a matter of
" favor, and not as right, as was the case with the Rajah himself. The moment, how-
" ever, the Rajah died, the estate would have been open to assessment under the reser-
" vation contained in the Government Orders to the Sudder Board of Revenue, and
" the transferee could not have pleaded that the Settlement had not expired. When
" the Rajah was convicted of treason and rebellion, he became civilly dead, all his
" rights and interests being forfeited to the State. As he could no longer hold his
" estate, so the Government was no longer called upon to waive its share of the rental,
" which it had done out of compassion for the Rajah's poverty, and to enable him to
" maintain his dignity and position. It acquiesced in the allegation that the Rajah
" had, prior to the mutiny, transferred his estate, and therefore the attachment was
" released and the property restored to the plaintiff. A new state of things, however,
" had arisen, and the Rajah having lost all kind of interest in the property, the Go-
" vernment was not under any obligation to continue to his successor an act of grace
" which was personal to himself. It therefore exercised its right to demand a proper
" share of the rental of the estate. The Collector fixed that share at Rs. 1,600 per
" annum, and this sum the plaintiff had agreed to pay, though she contended that the
" new assessment ought to commence from 1269 F.S., whilst the Collector demanded
" it from 1265 F.S., the date of the attachment. We think that he was at liberty to
" demand the increased jumma from 1265 F.S., the date of the utter extinction of the
" Rajah's interest in the estate, and lapse of the consideration extended towards him by
" the favor of the Government. Had the Rajah died in the course of nature, the estate
" would at once have come under revision of Settlement, and his successor would have
" been bound to pay the new demand from the date of his succession, even though,
" as in this case, some delay might have taken place before the assessment was defi-
" nitely fixed,—for the contingency of a new Settlement was expressly contemplated
" when the Government waived its own demand in favor of the Rajah. We think,
" therefore, that the Collector was correct in deducting from the realized collections of
" the estate an annual jumma of Rs. 1,600 for the years 1265 to 1268 F.S.; and, as this
" sum has been deducted and the surplus paid over to the plaintiff, she can have no-
" thing further to receive, nor can there be any question regarding the conditions of the
" new Settlement, of which five-eighths of the Government demand are payable by the
" zemindar, and three-eighths by the arazeedars or such proprietors. Whatever the
" latter have to pay, they pay through the zemindar. Whilst the Collector held the
" estate in his own hands, the collections were duly made and the jumma deducted,
" the plaintiff receiving the balance after satisfying the Government demand. With
" this view of the case, we decree the appeal and reverse the decision of the Lower
" Court, with costs, the result of our judgment being that the plaintiff's claim is al-
" together dismissed."

61. The Board have no further special remarks to make on any of the cases to which Government was a party during the past year, 1865-66.

62. Generally the Board have had much reason to be satisfied with the proceedings of the Collectors and Commissioners in this Department of their duties; and they have been gratified to observe the great interest taken by the Revenue Officers in the conduct of Government suits. But, on the other hand, they have found that in

very many instances the instructions contained in the Board's Circulars No. C.C. of 1851 and No. 17 of 1864, for communicating the result of suits and taking the Board's advice, have been disregarded; and in particular they note that in one district the existence of many suits by and against the Collector, as manager of estates under the Court of Wards, was not reported at the time of their institution, or at any other stage of the proceedings. The Board have called for an explanation of these omissions, and will issue strict injunctions to prevent their repetition.

63. In conclusion, I am to state that the system which it may be advisable to adopt in future for protecting the interests of Government in the Courts of Law, and the measures which the constitution of a High Court for these Provinces have now rendered necessary in this behalf will form the subject of a separate reference, which will be immediately submitted.

I have the honor to be,

SIR,

Your most obedient Servant,

J. D. SANDFORD,

Offg. Secretary, Board of Revenue,
North-Western Provinces.

No. 285A. OF 1866.

FROM

R. SIMSON, ESQUIRE,

Secretary to the Government,
North-Western Provinces,

To

W. CHICHELE PLOWDEN, ESQUIRE,

Secretary to the Board of Revenue,
North-Western Provinces, Allahabad.

DATED NYNEE TAL, THE 24TH SEPTEMBER, 1866.

SIR,

JUDICIAL DEPT., CIVIL.—N.-W. P.

I am directed to acknowledge the receipt of Mr. Sandford's letter No. 517, dated the 28th ultimo, with its enclosure, in which the Board of Revenue report, in their capacity of Legal Remembrancers, on the litigation in the Civil Courts to which Government has been a party for the year 1865-66.

2. The Commissioners of the Rohilcund and Benares Divisions, whose returns were received the latest, will be requested to explain the unpunctuality shewn in their submission.

3. With reference to paragraph 51 of the Report, I am to state that the Government concurs in the Board's view as to the position of Municipal Commissioners in respect of nuzool property, and considers that they can only be regarded as trustees for Government in the management of it. The transfer to the Commissioners of the Government right was not absolute, and latterly, in order to avoid misapprehension on this point, it has been made a rule that the sanction of Government must first be obtained before any of the nuzool property under their charge can be sold.

4. In regard to para. 55, I am to remark that, in the opinion of the Lieutenant-Governor, the Board should have directed a defence to be made on behalf of Government in the case of Mukdoom Beebee, urging the pleas set forth in the preceding paragraph of the Report.

5. The Lieutenant-Governor has noticed with much satisfaction the interest taken by Revenue Officers in the conduct of Government suits. The result of the

call for explanation in regard to the omission on the part of some Collectors to communicate with the Board regarding suits in which they are concerned should be reported for the information of Government.

6. The Lieutenant-Governor will be glad to receive an early Report on the important subject referred to in the last para. of the letter under reply.

7. In conclusion, I am to convey to the Board the thanks of Government for their Report.

I have the honor to be,
SIR,
Your most obedient Servant,

R. SIMSON,

Secretary to the Government,

North-Western Provinces.